

**DEPARTMENT OF THE INTERIOR****25 CFR Parts 15, 114, 115, 162 and 166****RIN 1076-AE00****Trust Management Reform: Leasing/ Permitting, Grazing, Probate and Funds Held in Trust**

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Notice of Proposed Rulemaking.

**SUMMARY:** The Department of the Interior, Bureau of Indian Affairs (BIA), proposes to revise its regulations in the areas of probate, funds held in trust for Indian tribes and individual Indians, leasing/permitting, and grazing. These revisions are meant to further fulfill the Secretary's fiduciary responsibility to federally-recognized tribes and individual Indians. Particularly, revisions to the probate regulations would institute necessary procedures to expedite the probate process for Indian decedents' estates. Revisions to regulations dealing with funds held in trust will standardize the process for collecting, distributing, and accounting for individual Indian monies and monies held in trust for tribal governments. Revisions to leasing/permitting regulations will implement the Indian Agricultural Resource Management Act and will address appropriate procedures for entering into leases and permits on Indian lands and, more importantly, in properly determining and accounting for the value of such leases to individual land owners and tribal entities. Revisions in the grazing permit regulations will address similar concerns and further standardize the process and forms utilized in granting permits on Indian lands. In the interests of economy of administration, and because all the proposed revisions clarify and standardize Departmental policy, they are proposed under one rulemaking vehicle.

**DATES:** Written comments must be submitted no later than October 12, 2000.

**ADDRESSES:** Comments (2 copies) should be addressed to: U.S. Forest Service (CAET), 200 E. Broadway, Missoula, MT 59807 Attn: Trust Rule. Comments on the information collection burdens should be copied to the same address with the original comment sent to: Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW, Washington, DC 20503 Attn: Interior Desk Officer.

**FOR FURTHER INFORMATION CONTACT:**

Duncan L. Brown, Department of the Interior, Office of the Secretary, 1849 C Street, NW, MS 7412 MIB, Washington, DC 20240, telephone 202/208-4582.

**SUPPLEMENTARY INFORMATION:**

- I. Background
- II. Part by Part Analysis
- III. Public Comments
- IV. Procedural Requirements
  - A. Review Under Executive Order 12866
  - B. Review Under Executive Order 12988
  - C. Review Under the Regulatory Flexibility Act
  - D. Review Under Small Business Regulatory Enforcement Fairness Act of 1996
  - E. Review Under the Paperwork Reduction Act
  - F. Review Under Executive Order 13132 Federalism
  - G. Review Under the National Environmental Policy Act
  - H. Review Under the Unfunded Mandates Reform Act of 1995

**I. Background**

In an effort to strengthen the services provided by the Secretary of the Interior to federally-recognized tribes and individual Indians and in recognition of its fiduciary responsibility to such tribes and individuals as identified in the Department's "Trust Management Improvement Project—High Level Implementation Plan," as revised and updated on February 29, 2000. The Department of the Interior, BIA, identified certain parts within 25 CFR that needed immediate attention and subsequent revision. These parts were identified through an internal review by the BIA in consultation with the Office of the Special Trustee for American Indians (OST), and from tribal responses to consultations held in the field over a period of years. Additionally, tribal non-governmental organizations were consulted for their opinions on what areas of BIA trust management needed clarification and more uniform application of policy and administration throughout Indian Country. The importance of the protection of tribal trust resources and the administration of monies held in trust for individual Indians and tribal governments were identified as critical to providing better services to federally-recognized tribes and individual Indians. Surface leasing and permitting of tribal and individual Indian resources, including grazing permits, were identified as those areas which generate the most revenues from individual Indian and tribal resources. Additionally, addressing the severe backlog in the Department's disposition of Indian decedents' estates was identified as an important step in assuring the orderly transfer of Indian trust funds and lands. Therefore, this

proposed rulemaking was initiated as an appropriate response to the Administration's stated goal of improving the administration and management of individual Indian and tribal trust resources. The proposed rule was developed with attention to Secretarial Order 3215, "Principles for the Discharge of the Secretary's Trust Responsibility," of April 28, 2000.

The development of this proposed rulemaking was achieved through informal consultation with affected tribal governments and Indian individuals. Drafts of the various parts were initially developed through the use of in-house teams within the Bureau of Indian Affairs. These teams consisted of federal personnel from headquarters and the field, and included program officers and Department attorneys possessing extensive knowledge and experience with the particular subject matter of the parts. These drafts were then shared with tribal entities and national tribal organizations for their input and recommendations for improvement. In many cases, areas were further expanded to respond to tribal concern with clarity and ease of administration. Tribal participation was further secured through the National Congress of American Indians (for member tribes), which established a working group to assist in the development of the regulations, and from BIA field personnel who contacted their respective tribes on a regional basis and transmitted drafts of the rulemaking to them for discussion and comment. In accordance with the government-to-government relationship with tribes, formal consultations will be scheduled during the comment period to facilitate an informed final rule.

While the proposed rulemaking responds to many of the concerns of Indian Country and the Administration's initiatives, the leasing and grazing parts of the rulemaking respond (in part) to the American Indian Agricultural Resource Management Act of 1993 (AIARMA)(107 Stat. 2011), as amended. One of the requirements of AIARMA was the development of regulations to implement the Act. The regulations for AIARMA were to protect, conserve, utilize, and maintain the highest productive potential on Indian agricultural lands through the application of sound conservation practices and techniques. In addition, the regulations were to meet the objectives of increasing productivity and the diversity and availability of agricultural products for subsistence, income, and employment; to manage agricultural resources consistent with integrated resource management plans;

to enable Indian farmers and ranchers to achieve the maximum potential from their resources; to promote self-sustaining Indian communities; and to assist in a reasonable annual return for Indian resources. One of the specific requirements of AIARMA was the development of regulations that would establish civil penalties for the commission of trespass on Indian agricultural lands and the designation of responsibility within the Department of the Interior for the detection and investigation of Indian agricultural lands trespass. Consequently, the Bureau of Indian Affairs is designated as the responsible agency in this proposed rulemaking.

This proposed rule rewrites parts 15, 115, 162 and 166 of 25 CFR in their entirety and removes the text of part 114 in its entirety. This revision is meant to streamline the policies, procedures, provisions and clauses that better reflect the Department's administration of its trust responsibility with respect to Indian trust resources. Practices in the field will be clarified and codified in the revised parts of 25 CFR. The issuance of this rulemaking will set a uniform standard of administration of Indian trust resources by the BIA throughout Indian Country. It is important to note, however, that, with the exception of the newly promulgated part 15—Indian Probate, the established practices currently codified in the above-referenced parts have not been discarded but, rather, have been revised to reflect a clearer understanding of the Department's administration of such parts. The thrust of these revisions are reflected in the part-by-part analysis below. After consultation with the Department's constituency in Indian Country during the comment period, it is anticipated that a final rulemaking will be issued in December 2000.

**II. Part-by-Part Analysis**

*A. 25 CFR Part 15—Probate of Indian Estates, Except for Members of the Five Civilized Tribes*

The purpose of this regulation is to describe the authorities, policies and procedures the BIA uses to probate an Indian decedent's trust estate, except for members of the Five Civilized Tribes.

This is a revision to the existing part and amends and replaces the part in its entirety.

The regulation proposes to implement administrative procedures by which the BIA would process and determine certain probate cases where a hearing is not required or requested. These procedures, embodying a reassumption by the BIA of responsibility to determine these probate cases, are the result of the Department's Indian Probate Reinvention Lab (IPRL). Formed in 1999, the IPRL examined the Department's Indian probate process from a multi-agency perspective, including the BIA, the Department's Office of Hearings and Appeals (OHA), which handles Indian probate cases requiring hearings, and the OST. Based on its analysis, which included reviewing reports from previous studies of Indian probate matters, site visits and interviews of customers and employees, the IPRL recommended, among other things, that the BIA establish attorney decision-makers at regional offices to handle certain probate cases under criteria to be established by regulation. This proposed revision of part 15 would implement in the BIA the procedural aspects of the IPRL's recommendations. At the appropriate time, the OHA will amend its regulations to accommodate the BIA's reassumption of responsibility for these probate cases, and to ensure that the same standards and criteria for determining heirs and paying claims are consistently applied between the BIA and the OHA. The reports of the IPRL are available on the BIA's home page [www.doi.gov](http://www.doi.gov).

In addition to establishing the process by which the attorney-decision makers in the BIA will handle certain probate cases, the proposed regulations in part 15 also address the handling of summary distributions of estates by the BIA. Formerly handled only by agency superintendents, summary distributions also will be handled by the attorney-decision makers. See 65 FR 25449–25450 (May 2, 2000).

The various subparts of part 15 address the purpose and scope of the Indian probate procedures; the mechanics of initiating the probate process, including the appropriate

notifications and assignments of interest; the preparation of the probate package itself, including the identification of necessary documents to facilitate a timely process; the disposition of claims against an estate and the ultimate distribution of the decedent's assets to the determined heirs; and an appeals process to follow should any disputes arise during any stage of the probate process. Cross references have been made to the hearings and appeals procedures of the OHA, including the determination of heirs, and to the use and disposition of funds held in trust for decedents (other than decedents of the Five Civilized Tribes) which may be included in an Indian decedent's estate.

*B. 25 CFR Part 114—Special Deposits*

The purpose of this part was to set forth the conditions governing the deposit, investment, and distribution of principal and interest on trust funds held by the Department in special deposit accounts. In addition, this part provided procedures required for determination of ownership and distribution of funds which are on deposit in account 14X6703 "Indian Moneys Proceeds of Labor Escrow Account—Pending Determination of Ownership." This special deposit account (IMPL Escrow Account) has been obsolete since September 30, 1987, as any unobligated balances were then deposited into miscellaneous receipts of the U.S. Treasury. Since this part dealt largely with this IMPL Escrow Account, the text of this part has been deleted in its entirety. Those provisions concerning other "special deposit accounts" are now referenced and explained in the newly revised part 115 below. It was the decision of the Department to move those provisions to part 115 because that part deals specifically with tribal and individual Indian trust funds. It is proposed, therefore, that part 114 be "reserved."

The chart below provides a crosswalk reflecting, by section, the proposed reorganization of pertinent sections of part 114 that have been situated in subpart E of part 115, and descriptions of the revisions being proposed.

CROSS REFERENCE WITH EXPLANATION FROM CURRENT TO PROPOSED CITATIONS

Current citation	New citation	Title	Remarks
114.1 .....	N/A .....	N/A .....	Purpose of "special deposit accounts" has been subsumed in the purpose section of the introductory language of part 115.

CROSS REFERENCE WITH EXPLANATION FROM CURRENT TO PROPOSED CITATIONS—Continued

Current citation	New citation	Title	Remarks
114.2 .....	115.002 .....	What are special deposits?	The definition of "special deposits" is the only term requiring explanation in this subpart of part 115.
114.3 .....	115.404 .....	May the BIA deposit into a special deposit account money that is paid prior to approval of a conveyance or contract instrument for land sales, right-of-ways, resource sales, grazing, or leasing, etc.?	The section under 114.3 referred to investments of special deposit funds. The new citation explains that monies paid to the BIA prior to approval of a contractual agreement do not earn interest until the monies are actually placed in a trust fund account upon such approval.
114.4 .....	115.400 .....	Who receives the interest earned on a special deposit account?	The section under 114.4 referred to the distribution of interest earned on a special deposit account. The new citation reflects the same understanding that interest follows principal.
114.5 .....	N/A .....	N/A .....	The section under 114.5 referred to the IMPL Escrow Accounts. They have been obsolete since September 30, 1987, and the regulations referring to such accounts are likewise obsolete. This has been removed in its entirety from 25 CFR.

*C. 25 CFR Part 115—Trust Funds for Tribes and Individual Indians*

The purpose of this regulation is to describe how the Secretary, primarily through the Bureau of Indian Affairs (BIA) and the Office of Trust Funds Management (OTFM) within the OST, carries out the trust duties owed to tribes and individual Indians in managing and administering trust assets for the exclusive benefit of tribal and individual Indian beneficiaries. The regulation also implements provisions of the American Indian Trust Fund Management Reform Act. This is a revision to the existing part 114 and 115 and amends and replaces those parts in their entirety.

The proposed rule making includes in subpart B sections on "frequently asked questions" about the sources of monies that are deposited and disbursed from both tribal and individual Indian accounts. These questions include an explanation of which financial resources may be accepted for deposit into a tribal account or an individual Indian money (IIM) account; the process for depositing money into an account; and an explanation of how money deposited into trust earns interest. We are requesting comments on whether the Secretary should accept into trust tribal income from products directly derived from trust land within the tribe's jurisdiction. For example, under such a distinction, income from a logging mill

that processes trees harvested from trust land within the tribe's jurisdiction may be considered income; however, income derived from other businesses merely located on trust land, but not directly using the land for production of income, such as gaming profits or smoke shop profits, will not be considered trust income. When commenting on tribal trust income, please include a list of tribal operations, other than logging mills, that might be included in this category; any suggestions for a definition of tribal income that is directly derived from trust land; and the documentation that would be sufficient to evidence that the income was directly derived from the tribe's trust land.

One of the most significant revisions to this part is the addition, in subpart C, of the procedures used in administering tribal trust funds. These procedures have been the standard method of operation in the field; however, they have never been codified in the Code of Federal Regulations. With this addition, questions concerning tribal trust account management are explained in detail with an emphasis placed on everyday operations for such accounts. These issues include opening a tribal account; depositing or withdrawing monies from tribal accounts; the investments and other cash management operations of tribal accounts; accounting information, record keeping, and standards of performance in administration of tribal accounts; and

the disposition of certain judgment funds in tribal accounts. A new provision will encourage tribes, where submitting an annual budget to the Secretary is not required by law, to provide annual cash flow projections to assist the Secretary in making investment decisions to meet a tribes cash flow needs. The regulation will also inform tribes to what extent funds withdrawn from tribal trust accounts may be re-deposited into trust.

Subpart D contains much of the current information concerning IIM accounts, especially with respect to depositing and withdrawing money from such accounts. New provisions have been added to this subpart to explain how court orders may impact an IIM account; how the account holder can access his account information; the frequency of statements of performance for an IIM account; and the conditions under which the Department will provide account information to a third party. Information is also provided concerning administrative matters regarding these accounts, such as changes in address, time period for cashing IIM checks, process for reporting lost or stolen checks, the circumstances when check proceeds may be re-credited to an IIM account, and the reporting of IIM account information to outside agencies. Additional provisions address withdrawing limited funds from an estate account immediately following

the death of an account holder for burial-related costs and receiving income from life-estate accounts. We are eliminating the provision that allowed voluntary deposits to IIM accounts in limited circumstances. One procedural issue that continues to present practical problems is the treatment of accounts belonging to individuals whom we cannot contact because their whereabouts are unknown. We are requesting comments on how to locate IIM account holders whose whereabouts are unknown. In addition, we would like comments on how the funds in IIM accounts for account holders whose whereabouts are unknown should be treated. These accounts will be maintained as unrestricted accounts unless we have specific information requiring that they be maintained as restricted accounts.

Subpart D includes a detailed explanation of how the Secretary supervises restricted accounts for minors or adults who are *non compos mentis* or have been adjudicated to be in need of financial management assistance. We are proposing to eliminate the administrative process for determining when to supervise an IIM account for an adult who is in need of financial management assistance. Rather, we are proposing to supervise such accounts only when a court of competent jurisdiction has determined that an adult IIM account holder is in need of financial management assistance. Therefore, an account holder with a supervised IIM account must have a legal guardian or conservator appointed by a court of competent jurisdiction. Although we propose to no longer make this determination ourselves, we are retaining the category of adults in need of financial management assistance in recognition of the fact that there are individuals who require such assistance but are not incompetent. These proposals are intended to ensure that account holders have decision making authority regarding their accounts unless a court with authority to make such decisions determines that an account holder is unable to manage his or her funds. We request comments about the impact of these proposals on tribal courts as well as account holders.

In order to fully protect holders of supervised and restricted IIM accounts, we propose to require additional duties for legal guardians in regard to their responsibilities for IIM funds, including working with the BIA to develop annual distribution plans for IIM funds, making an annual accounting to the BIA for all IIM funds expended, reviewing any IIM statements of performance for errors,

and filing any tax returns associated with IIM funds. Consistent with existing regulations, we will continue to accept proceeds from other federal government agencies for IIM account holders, but only when the account holder is under legal disability and does not have a legal guardian, unless the BIA is acting in the capacity of a guardian. We also propose to not recognize a power of attorney for purposes of distributing money from an IIM account to a party other than the account holder.

Subpart D also addresses in detail the procedures related to the supervision of a minor's account, consistent with our trust obligations. We propose to allow withdrawals from a minor's account only under a BIA approved distribution plan when those withdrawals are directly related to the minor's health, education, and welfare. We propose that a custodial parent or a guardian who withdraws funds from a minor's IIM account on behalf of the minor must account annually to the BIA for the use of those funds. We request comments on whether we should define "minor" in such a manner that would incorporate a tribal law that specifies an age of majority that is different than 18. If we were to define minor as such, then an account holder who is subject to the tribal law would not have unrestricted access to his or her IIM account funds until the account holder reached the age of majority as defined by the tribal law.

Subpart D clarifies existing practices and proposes new language to allow an IIM account holder to encumber his or her account and to permit the BIA to involuntarily restrict an IIM account in fulfillment of an obligation made by the account holder to a third party. An account holder may authorize the OTFM to place a hold on his or her IIM account so that income deposited into the account remains in the account as opposed to being automatically disbursed to the account holder when the account reaches a specific balance. An account holder would be able to voluntarily authorize the OTFM to make third-party payments from his or her IIM account so long as the account balance on the date of payment is sufficient to cover the authorized third party payments. These instructions could be changed upon request of the IIM account holder. An account holder would continue to be able to assign IIM income as security for a debt to a third party, which result in the creation of legal rights to IIM funds for satisfaction of a debt or an obligation to the third party, which cannot be voluntarily removed by the account holder. Under this proposal, the third party will have to perfect the security interest prior to

presenting the assignment of IIM income to the BIA for payment. To perfect an assignment of IIM income as security, the third party generally will have to present the IIM assignment made by the account holder and the account holder's record of payment(s), including any unpaid balance, to a court of competent jurisdiction and obtain a judgment that determines the amount owed by the IIM account holder to the third party. Under this proposal, other than a debt secured under the Indian Finance Act, the only assignment of income that the BIA would recognize without a court order or judgment perfecting a third party's interest in an IIM account is an assignment of income for health care emergencies made by the account holder directly to the service provider. We recognize that these proposed limitations on the ability of third parties to obtain legal rights to funds in an IIM account may require many creditors, such as tribal credit programs, to revise their debt collection practices, and may have an impact on the amount of funding available for a loan other than one secured under the Indian Finance Act. These proposals are intended to ensure that the Secretary can properly exercise his or her trust responsibility to individual account holders such that the funds to be remitted to a third party are in fact owed by the account holder. We invite comments on the extent to which these proposals will impact credit programs and individual account holders.

Subpart E, which replaces part 114, limits the types of funds that may be deposited into special deposit accounts. This subpart includes an explanations of special deposit accounts and their administration by the BIA and the OTFM. Specifically, sections address whether and how special deposit accounts earn interest; and the inability to deposit cash bonds in a special deposit account.

Subpart F outlines the notice requirement and hearing process associated with an involuntary restriction on an IIM account. This subpart outlines the circumstances under which the BIA will place an involuntary restriction on an IIM account, including where an account holder has given a third party legal rights to the funds held in his or her IIM account, where an administrative error has been caused by the BIA or the OTFM in the depositing or disbursing of IIM funds, and under limited court order involving the need to supervise an account. We propose to place a restriction on an IIM account five days after the BIA mails the account holder notice by certified mail of its decision

to place a restriction on the IIM account. If we do not have an address for the account holder, we propose to give notice through publication and a restriction will be placed on the account five days after the date of the final publication of the public notice.

Many of the procedures in subpart F are found in the current regulation;

however, the revised subpart goes into greater detail regarding the process that must be followed prior to restricting an IIM account.

Subpart G makes reference to general appeals. Subpart H refers to applicable record-keeping responsibilities.

Subpart I merely renumbers the sections of the current regulation regarding disposition of accounts held

by the Osage Agency and those accounts administered on behalf of members of the Five Civilized Tribes.

The chart below provides a crosswalk reflecting, by section, the proposed reorganization of part 115, along with remarks explaining the revisions or the inclusion of new sections dealing with the clarification of existing practices.

CROSS REFERENCE WITH EXPLANATION FROM CURRENT TO PROPOSED NEW CITATIONS

Current citation	New citation	Title	Remarks
115.1 .....	115.002 .....	What definitions do I need to know?	More extensive definitions listing.
115.2 .....	115.803 .....	Osage Agency.	Redesignated. No change.
115.3 .....	115.328 .....	How do I withdraw money from my IIM account?	Plain language.
115.4(a) .....	115.364 .....	When will the BIA authorize withdrawals from a minor's account?	Plain language, more explanation.
115.4(b) .....	115.366 .....	Will I automatically receive all my IIM funds when I turn 18?	Clarification of judgment fund disbursements.
115.5 .....	( <sup>1</sup> ) .....	Prior: Adults Under Legal Disability.	More explanation on disbursement requirements for all types of restricted accounts referenced throughout the part.
115.6 .....	115.325 .....	May I deposit money into my IIM account?	Clearer guidance on what funds may be deposited into accounts.
	1115.326 .....	May I redeposit IIM funds back into my trust account once I receive the money?	
115.7 .....	115.102(c) .....	What specific sources of money may be deposited into a trust fund account?	Clearer guidance.
115.8 .....	115.333 .....	May I authorize the OTFM to make payments directly to a third party on my behalf?	Clearer guidance on vendors.
	115.334 .....	Will BIA ever withdraw money from my account without my authorization?	Clearer guidance on special payment circumstances.
115.9; 115.10(a) .....	115.374 .....	May I authorize the OTFM to make third party payments from my IIM account to pay my monthly bills on other obligations?	Clearer guidance on encumbrance.
	115.502 .....	How will I be notified if a decision has been made to place my IIM account under supervision or encumbrance?	Guidance on notice requirements.
115.10(a) .....	115.505 .....	What information will the BIA include in its notice?	Notice letter requirements.
115.10(b) .....	115.384 .....	If I have an encumbrance on my account, may I make withdrawals?	Plain language.
115.10(c)(1) .....	115.507 .....	When will the BIA conduct a hearing to allow me to challenge its decision to restrict my account?	Plain language.
115.10(c)(2) .....	115.508 .....	Will I be allowed to present personal testimony?	Plain language.
115.10(c)(3) .....	115.511 .....	May I be represented by an attorney at my hearing?	Plain language.
115.10(c)(4) .....	115.517 .....	If the BIA decides to restrict my account after my hearing, do I have the right to appeal that decision?	Plain language.
115.10(c)(5) .....	115.512 .....	Will the BIA record the hearing?	Plain language.
115.10(c)(6) .....	115.514 .....	How long after the hearing will the BIA make its final decision?	Plain language.

## CROSS REFERENCE WITH EXPLANATION FROM CURRENT TO PROPOSED NEW CITATIONS—Continued

Current citation	New citation	Title	Remarks
115.10(d) .....	115.518 .....	If I decide to appeal the BIA's decision after my hearing, will BIA restrict my account during the appeal?	Plain language.
115.11 .....	115.801 .....	Funds of deceased Indians of the Five Civilized Tribes.	Redesignated. No change.
115.12 .....	115.801 .....	Funds of deceased Indians of the Five Civilized Tribes.	Redesignated. No change.
115.13 .....	115.802 .....	Assets of members of the Agua Caliente Band of Mission Indians.	Redesignated. No change.
115.14 .....	115.600 .....	Do I have a right to appeal any decision made under this part?	Plain language.
115.15 .....	N/A .....	N/A .....	Section deleted. Information collection requirements have been identified for clearance.
New .....	115.001 .....	What is the purpose of this part?	Explains the inclusion of tribal trust accounts with the regulations specific to IIM accounts.
New .....	115.103–110 .....	Frequently asked questions.	Pertains to tribal and individual accounts. Meant as explanatory tool for service constituency. Concerns what monies may be deposited, process for depositing, and investments/interest monies.
New .....	115.200–221 .....	Administration of tribal accounts.	Clarifies current practice.
New .....	115.300–302 .....	Basic elements of IIM accounts.	Clarifies understandings and current practice.
New .....	115.303–312 .....	Obtaining information on IIM accounts, use of accounts as collateral for a loan, and reports to the IRS.	Clarifies current practice.
New .....	115.317–324 .....	Personal administrative concerns regarding IIM accounts, <i>e.g.</i> , changes, lost checks, decedents' estates deposits, etc.	Clarifies current practice.
New .....	115.328–332, 115.335–336 .....	Withdrawing funds from IIM account.	Clarifies current practice.
New .....	115.340–404 .....	Administration of special accounts: Supervised accounts, minors accounts, encumbered accounts, special deposit accounts.	Clarifies current practice.
New .....	115.500–504 .....	Civil procedures necessary in restricting or otherwise encumbering an account.	Clarifies current practice.
New .....	115.700 .....	Who owns the records associated with this part?	Provides guidance for record keeping.
	115.701 .....	What are a tribe's obligations regarding trust fund records?	
	115.702 .....	How long must a tribe keep its records?	

<sup>1</sup> None.

*D. 25 CFR Part 162—Leases and Permits on Indian Lands*

The purpose of this part is to describe the authorities, policies and procedures the BIA uses to grant, approve and administer surface leases and permits on certain lands held by the United States in trust for tribes and individual Indians and certain lands owned by the federal government. It revises, amends and entirely replaces the existing part 162, and implements the American Indian Agricultural Resource

Management Act (AIARMA), 25 USC 3703, *et seq.* with regard to leases on Indian agricultural land. With respect to those regulations governing the administration of leases on specific reservation lands, the proposed rule will not effect any changes, but rather will merely renumber those sections.

The AIARMA, enacted in December, 1993, requires that the Secretary conduct all "land management activities"—defined in section 4(12)(D) to include the "administration and

supervision of agricultural leasing and permitting activities, including a determination of proper land use \* \* \* appraisal, advertisement, negotiation, contract preparation, collecting, recording and distributing lease rental receipts"—on Indian agricultural lands in accordance with agricultural resource management plans, integrated resource management plans, and all tribal laws and ordinances, except where such compliance would be contrary to the trust responsibility of the United States.

Under the mandate of section 301 of the AIARMA, the BIA met with tribal representatives to produce the first draft set of implementing regulations in March, 1994. This first draft, distributed for comment to nearly 3000 addresses on April 29, 1994, did not consolidate the leasing and grazing provisions of 25 CFR parts 162 and 166, respectively. After five formal hearings across the nation, a second draft regulation was distributed for comment on June 28, 1994. This draft contained leasing and grazing rules in a single part. A final draft that included language for the proposed subpart D was distributed on November 30, 1994, and published in the **Federal Register** as a proposed rule on June 17, 1996, 61 FR 30560-70. The proposed rule was withdrawn.

This proposed part balances the responsibilities the Secretary has as trustee of Indian land with the need for tribes and individual Indian landowners to exercise maximum control over their Indian agricultural lands and business affairs. The proposed regulation includes five new sections that clarify the Secretary's responsibilities regarding business leases (Subpart E), compensation to landowners (Subpart F), violation of lease terms (Subpart H), leases that include a non-trust interest (Subpart J), and the procedures for handling trespass on tribal or individual Indian trust lands (Subpart L). It does not include grazing permits, which are covered in the proposed part 166.

Several tribes, and the NCAI, have suggested that the Secretary has discretion under existing statutes to permit tribes to grant their own short-term leases with a routine BIA approval process, reserving a more extensive review and approval process for long-term leases that may adversely affect the preservation of tribal culture and society. We request comments on how such a lease approval process might work under existing law, in light of the Secretary's trust responsibility.

Subpart A, "Purpose and Definitions," defines key terms used throughout the proposed regulation. These terms are consistent with those found in the AIARMA.

Subpart B, "Lease Provisions and Requirements," contains general rules and principles that pertain to leases of Indian agricultural land. Section 162.4 would clarify the existing requirement that lessees comply with all applicable tribal laws and ordinances. Failure to comply with such requirements would be considered a violation of the lease. Also, in some instances, the lessee would be required to provide an environmental baseline survey of the property in order to protect the Indian

landowner from potential liability resulting from the lessee's use of hazardous materials during the lease term. Lessees would be required to provide a bond for each lease acquired, unless the Indian landowner requests that the BIA waive the requirement.

Many tribes and individuals have expressed a desire that the current practice of allowing direct payments of lease income to Indian landowners be continued under this part. The BIA recognizes the utility of direct payments and does not propose to alter the practice at this time. Nevertheless, we continue to struggle to fashion a system that accommodates both the ability of the Indian landowner to receive lease payments directly from the lessee and the Secretary's legal obligation under the American Indian Trust Fund Management Reform Act to account for that income. The BIA believes that it may be sufficient to satisfy both interests by establishing direct pay arrangements for leases on tribal lands through contracts or compacts under the Indian Self Determination and Education Assistance Act ("Self Determination Act"). The BIA requests comments on: (1) The continued need for direct payments for tribal and individual Indian lands; (2) the advisability of contracts or compacts under the Self Determination Act as the sole method for direct payments to tribes; and (3) the compatibility of such payments with the Secretary's legal obligation as trustee to obtain the information regarding payment history that is needed to perform the necessary accounting.

Consistent with the AIARMA, the proposed Subpart B would make clear that, when specifically authorized by a tribal resolution that establishes a general policy for leasing of Indian agricultural lands, the Secretary, with regard to such leases, will: Provide a preference to Indians in the issuance of agricultural leases and permits; waive or modify the requirement that a lessee provide a bond, or require another type of surety; and approve leases of tribally owned agricultural land at rates set by the tribal governing body. When the tribal resolution defines "highly fractionated individual heirship land," the Secretary may waive or modify notice requirements pertaining to such land.

Also consistent with the AIARMA, the proposed Subpart B would provide that individual Indian landowners of at least 50% of the beneficial interest in a tract of agricultural land could exempt their land from the Secretary's implementation of the tribal general

policy discussed above by submitting a written request to the BIA.

The proposed Subpart B preserves the individual Indian landowner's flexibility to negotiate his or her own lease terms, subject to BIA approval, by allowing multiple tracts of trust land to be combined into one lease and by requiring no standard lease form. Leases under the new regulation would need to conform only to the substantive requirements outlined in the subpart; individual Indian landowners would be able to use any lease form they think best serves their business purposes.

The new Trust Asset Accounting and Management System (TAAMS), an automated accounting system currently being fielded by the BIA, will greatly enhance the Secretary's ability to collect and manage income from trust assets. For example, as outlined in the proposed Subpart B, the system will allow the BIA to notify Indian landowners that lessees have violated the lease by failing to make timely payment and that late payment penalties have been assessed.

Proposed § 162.44 in Subpart B would clarify the BIA practice of reviewing the lease every 5 years to determine whether an adjustment should be made to the lease payments. Several tribes have suggested that the BIA could use the Consumer Price Index (CPI) or the Producer Price Index (PPI) to determine lease payment adjustments. However, recognizing that there may be several appropriate standardized price indicators by which the adjustment could be based, the BIA requests comment on an appropriate method of adjusting lease payments under the new regulation.

The BIA recognizes that Indian landowners may in some situations receive maximum value from their trust lands by allowing the lessee to use his or her leasehold interest as collateral for a loan. § 162.23 in subpart B describes the proposed circumstances under which the BIA could approve a leasehold mortgage of trust property. Because economic conditions and local practices vary somewhat among regions, the BIA requests comment on the extent to which the proposed § 162.23 supports Indian landowners' business activities, reflects current business practices and allows the Secretary to fulfill trust responsibilities.

The proposed subpart B would allow a lessee to assign his interest in a lease that is subject to a leasehold mortgage to a party other than the mortgagee if the assignee agrees to be bound by the terms of the lease. In such cases, the lease may provide the Indian landowner with a

right of first refusal on the assignment of the leasehold interest.

The new subpart B also proposes to require that all leases with a lease term greater than one year be recorded in the BIA's Land Titles and Records Office (LTRO).

Subpart C, "Process for Obtaining a Lease," highlights the policy of providing for maximum Indian landowner control consistent with the Secretary's trust responsibilities. Under the proposal, the Indian landowner is primarily responsible for leasing Indian land, with the assistance and approval of the Secretary. The regulation would change current practice, not addressed in the existing part 162 regulations, in that the BIA would no longer give conditional lease approvals. However, the proposed provision preserves flexibility in business affairs by providing that Indian landowners may contract to lease land at a future date, with the contract specifying essential lease terms and any conditions to be satisfied—such as National Environmental Policy Act (NEPA) compliance—before the Secretary would approve the lease. Subpart C would also relieve parents, guardians or others acting in a legal capacity in place of a parent from the requirement to obtain a lease to use Indian agricultural lands owned entirely by their minor children when certain conditions are met.

In order to provide maximum protection for all trust property beneficiaries, in situations where an Indian landowner does not own a 100% interest in trust land, the proposed § 162.67 in subpart C would require that the Indian owner of the fractionated interest obtain a lease from all co-owners of the land before using the land exclusively for his or her own purposes. The BIA recognizes the unique burdens placed on potential users of fractionated land, and requests comment on the proposed requirement.

Subpart D, "Granting a Lease," restates the statutory mandate that tribes and individual Indians may grant a lease of their own trust lands with the Secretary's approval. It clarifies who may represent an individual Indian landowner in granting a lease when, for example, the landowner is a minor or unable to manage his or her own affairs due to illness or other incapacity. The subpart also allows the Secretary to protect trust assets by granting a short-term revocable permit for a third party to enter trust lands in certain situations, such as where it is not practical to provide notice to every Indian landowner.

Subpart E, "Business Leases," covers both ground leases and leases of

developed land for purposes other than farming, grazing, or use as an individual homesite. Under the proposed subpart, entities seeking to lease Indian land for business purposes would negotiate terms directly with an Indian landowner, but the lease would continue to be approved by the Secretary. The proposed rule provides that business leases generally must require that the lessee pay fair rental value; exceptions are clearly enumerated and would require the Secretary's approval.

Although in most instances assignments, sublets, or mortgages of business leases would require our approval, Subpart E would allow Indian landowners considerable flexibility to support commercial or residential development on Indian lands. However, several tribes have suggested that business subleases should be routinely approved by the BIA when income under the sublease is set below a certain amount. The BIA must balance the additional business flexibility this proposal might provide Indian landowners against its trust obligations and requirements of federal law. Therefore, the BIA seeks comment on the proposal that business subleases of less than \$250,000 under subpart E be routinely approved by the BIA.

Subpart F, "Compensation to Indian Landowners," details what the BIA would do with rent payments received from lessees of Indian land. Several tribes have suggested that the BIA should apportion lease revenues to beneficiaries based on the productivity of a tract in situations where the lease includes several discrete parcels of land. The proposed regulation would continue the current BIA practice of prorating lease revenue based on the number and size of the tracts in relation to the total leasehold, then distributing revenue to each owner according to his or her fractional share of each tract. Recognizing that the method used for distributing trust property income has significant impact on Indian landowners, the BIA requests comments on methods to divide lease income from multi-tract leases.

Subpart G, "Administrative Fees," contains a table of administrative fees the BIA proposes to charge for approving leases and related documents. The subpart would allow the BIA to waive all or part of an administrative fee in certain circumstances, and would allow a tribe to establish and collect its own schedule of administrative fees.

Consistent with its responsibility as trustee, the BIA would assume affirmative responsibilities in the event

the lessee violates the terms of the lease in Subpart H, "Lease Violations." In this subpart, when reasonable grounds exist based on facts known to us, the Secretary would reserve the right to enter onto leased land with or without prior notice to the lessee to enforce compliance with the lease provisions and to protect trust assets. In the event of a lease violation, the BIA would give the lessee notice by certified mail of the violation and specific period of time to correct it. If the violation is not corrected, the BIA may take action up to and including canceling the lease and ordering the lessee to vacate. Subpart I, "Appeals," outlines general appeal procedures by reference to 25 CFR Part 2, "Appeals From Administrative Actions."

Proposed Subpart J, "Non-Trust Interests," would assert that the Department has constructive authority to grant or approve only leases of trust interests in Indian land; under the proposed regulation, undivided non-trust interests in Indian land would be leased directly from owners of these interests. The proposed regulation would clarify that the Secretary has no obligation to lease or collect rental payments for the non-trust interests in Indian lands. Payments for the non-trust interests would be made according to the terms negotiated between the lessee and the owners of the non-trust interests.

We recognize that the fractionation of ownership of Indian lands has made the leasing of Indian lands for trust beneficiaries more complex. Additionally, the Secretary's trust obligation to lease Indian lands does not run to the owners of undivided non-trust interests. Not only does the BIA lack statutory authority to lease or collect rental payments on behalf of such interests, but we may not know who the current owners are because we do not maintain or update non-trust ownership records after the title passes from Indian ownership. Nevertheless, there may be a non-trust obligation to account to the owners of the non-trust interests for the income from leases on the undivided land received on behalf of Indian landowners. Were the BIA to undertake this accounting, the additional workload burden could not be met with existing resources, and our ability to lease fractionated Indian lands on behalf of the Indian owners would be severely curtailed. This would be detrimental to the Secretary's ability to meet the trust responsibility to Indian landowners. We request comments on how to resolve the conflict between the interests of the owners of non-trust interests in the activity on the

undivided lands, and the Secretary's trust responsibility to Indian landowners.

As trustee, the BIA must determine the fair annual rental value of Indian land in order to assist Indian landowners in negotiating a lease with potential lessees and to allow the Secretary to determine if a lease is in the best interest of the landowner. Subpart K, "Valuation," would allow the BIA to determine fair annual rental value for a lease of Indian land by appraisal, advertisement, competitive bidding or any other appropriate method that is consistent with the Uniform Standards of Professional Appraisal Practices (USPAP). The BIA does not intend to specify in part 162 the method for appraising Indian land; flexibility in choosing an appraisal method would allow the Secretary to most effectively discharge his responsibility as trustee.

Leases of Indian agricultural lands generally must bring the landowner fair annual rental value. The proposed subpart K would clarify the statutory authority allowing the Secretary to approve a lease of individually owned Indian land at less than fair annual rental value when, for example, the lease is for religious, educational, recreational or another public purpose, or when the lease is for a homesite for a person related to the individual Indian landowner. The Secretary also would approve a lease of tribal land at less than fair annual rental if certain conditions are met. In each instance, the Secretary would be required to determine that approving the lease at less than fair annual rental value is in the best interest of the tribe or individual Indian landowner.

Under the proposed subpart L, "Trespass," the BIA would investigate

accidental, willful or incidental trespass by third parties onto Indian agricultural land and would have the authority to assess penalties or seek damages against the trespasser or seize or impound the trespasser's property. The proposed rule would establish a civil penalty for trespass that is consistent with the AIARMA. Tribes that adopt the provisions of subpart L would have concurrent jurisdiction with the Secretary to enforce the new trespass provisions. Tribes may also request that the BIA allow a tribal court to prosecute trespass on Indian agricultural land.

Subpart M of the proposed regulation would simply renumber existing regulations governing administration of leases on specific reservation lands; it does not propose to effect any changes to those existing provisions.

CROSS REFERENCE WITH EXPLANATION FROM CURRENT TO PROPOSED NEW CITATIONS

Current citation	New citation	Title	Remarks
162.1	162.2	What key terms do I need to know?	More extensive definitions listing.
162.2	162.70	Who may grant a lease?	Cross references differing authorities for granting leases.
	162.71	Who may represent an individual Indian landowner in grant a lease?	
	162.72	May an emancipated minor grant a lease on his or her own Indian land?	
	162.73	When may the Secretary grant permits on behalf of individual landowners?	
162.3	162.70	Who can grant a lease?	Includes general provisions for tribes, Indian landowners, and the BIA.
162.4	162.68	Do the parents or guardian of minors who own Indian land have to obtain a lease before using the land?	Qualifies use as one that directly benefits the children.
162.5(a)	162.18	Is there a standard lease form?	Plain language.
162.5(b)	162.83	How much rent must a lessee pay?	Includes exceptions to fair annual rental rate.
162.5(b)(1)	162.80	What types of leases are covered by this subpart?	Included under business leases as separate and apart from usual agricultural leaseholds.
162.5(b)(2)&(3)	162.83	How much rent must a lessee pay?	Includes lease payments for less than fair annual rental rate.
	162.152	Will BIA ever grant or approve a lease at less than fair annual rental?	
162.5(c)	162.45	Must a bond be submitted for a lease?	Plain language.
162.5(c)(1)(2)(3)	162.46	How do we determine the amount of the bond?	Plain language.
162.5(d)	162.51	Is insurance required for a lease?	Describes types of insurance.
162.5(e)	162.27	How long is a lease term?	Plain language.
162.5(f)	162.41	To whom are lease payments paid?	
	162.42	May a lessee send a lease payment directly to the Indian landowner?	Describes current practice. Comments are requested.
162.5(g)(1)(2)(3)	162.26	Are there specific provisions that must be included in a lease?	Same obligations, plain language.

## CROSS REFERENCE WITH EXPLANATION FROM CURRENT TO PROPOSED NEW CITATIONS—Continued

Current citation	New citation	Title	Remarks
162.5(h)(1)(2) .....	162.42 .....	May a lessee send a lease payment directly to the Indian landowner?	Describes current practice. Comments are requested.
162.6 .....	162.10 .....	How is a lease on Indian land obtained?	Includes negotiated & bid leases.
162.7 .....	162.10 .....	How is a lease on Indian land acquired?	Includes negotiated & bid leases.
162.8 .....	162.27 .....	How long is a lease term?	Includes all term variables.
162.9 .....	162.30 .....	What happens to improvements constructed on Indian lands when the lease has been terminated?	Plain language. Disposition of improvements in all events.
	162.31 .....	What happens if the improvements are not removed within the specified time period?	
162.10 .....	162.17 .....	Can more than one tract of land be combined into one lease?	Plain language.
162.11 .....	162.26 .....	Are there specific provisions that must be included in a lease?	Conservation concerns inclusive in listing of lease provisions.
162.12(a)(b) .....	162.21 .....	Can a lease be amended, modified, assigned, transferred, or sublet?	Plain language.
162.12(c) .....	162.22 .....	Can a lease be used as collateral for a leasehold mortgage?	Plain language.
162.12(d) .....	162.25 .....	Can the encumbrancer assign the leasehold interest after a sale or foreclosure of an approved encumbrance?	Fuller explanation.
162.13(a) .....	162.114 .....	Are there any other administrative or tribal fees, taxes or assessments that must be paid?	Fuller explanation.
162.13(b) .....	162.110 .....	Are there administrative fees for a lease?	Plain language.
162.13(b)(1)(2) .....	162.111 .....	How are administrative fees determined?	Use of explanatory table.
162.14 .....	162.122 .....	What happens if a violation of a lease occurs?	Break-down of explanation.
	162.123 .....	What will a written notice of violation contain?	
162.15 .....	162.190 .....	Crow Reservation	Redesignated. No change.
162.16 .....	162.191 .....	Fort Belknap Reservation	Redesignated. No change.
162.17 .....	162.192 .....	Cabazon, Augustine, et al.	Redesignated. No change.
162.18 .....	162.193 .....	Colorado River Reservation	Redesignated. No change.
162.20 .....	162.194 .....	Salt River and San Xavier Reservations	Redesignated. No change.
New .....	162.4–162.9 .....	Applicability of tribal laws	Clarifies current practice.
New .....	162.14–162.16 .....	Procedures for recording lease	Clarifies current practice.
New .....	162.36–162.43 .....	Time and form of rental payments	Clarifies current practice.
New .....	162.50–162.52 .....	Types/disposition of bonds accepted	Clarifies current practice.
New .....	162.80–162.91 .....	General provisions of business leases	Clarifies current practice.
New .....	162.100–162.102 .....	Receipt and distribution of rental payments	Clarifies current practice.
New .....	162.124–162.127 .....	Process for curing lease violations	Clarifies current practice.
New .....	162.128–162.128 .....	Emergency actions by the Secretary	Clarifies property protection responsibility of the Secretary.
New .....	162.140–162.147 .....	Non-trust property interests	Clarifies current practice.
New .....	162.150–162.152 .....	Determination of fair annual rental rate	Clarifies current practice.
New .....	162.160–162.179 .....	Trespass Provisions	Responds to AIARMA direction.
New .....	162.180 .....	Who owns records associated w/ this part?	Responds to field question.

*E. 25 CFR Part 166—Grazing Permits on Indian Lands*

The purpose of this part is to describe the authorities, policies and procedures the Secretary uses to grant, approve and

administer grazing permits on agricultural lands that are restricted against alienation or are held by the United States in trust for federally recognized Indian tribes and individual

Indians, and certain lands owned by the federal government. It revises and entirely replaces the existing part 166, and implements the AIARMA, 25 U.S.C. 3703, *et seq.*, with regard to grazing

permits on Indian agricultural land and education in agriculture management.

Under the mandate of section 301 of the AIARMA, in consultation with tribal representatives, the BIA developed a first draft of regulations to address grazing permits on Indian agricultural land in 1994. The history of this process is described above under the proposed 25 CFR Part 162—Leases and Permits on Indian Land.

This proposed part balances the Secretary's responsibilities as trustee of Indian land and resources with the need for Indian tribes and individual Indian landowners to exercise control over their agricultural trust lands and business affairs. The proposed regulation is organized to include twelve subparts for the convenience of the reader. The expanded proposed sections would clarify existing policy and procedures governing the administration of grazing permits on Indian agricultural lands and is intended to bring consistency to the administration of grazing permits across the BIA. This part does not include surface leases and permits for purposes other than grazing, which are covered in the proposed part 162.

Subpart A, "Purpose and Definitions," defines key terms used throughout the proposed regulation. These terms are consistent with those found in the AIARMA.

Subpart B, "Grazing Permit Requirements," describes general requirements and principles for obtaining a permit, obtaining a permit (leasehold) mortgage, modifying and assigning a permit, and subpermitting. These general grazing permit provisions would be consistent with their corresponding leasing provisions proposed under 25 CFR Part 162—Leases and Permits on Indian Land.

The duration of permits is addressed in proposed § 166.107. This section would recognize the authority of tribes to determine the duration of permits on tribal lands. Under the AIARMA, grazing permits would be generally granted for a period of ten years, unless a longer term of up to 25 years is appropriate.

This proposed subpart would assert that the Department has constructive authority to grant or approve only permits of trust interests in Indian lands. Non-trust interests in Indian lands would be treated in the same manner as provided in the proposed 25 CFR Part 162—Leases and Permits on Indian Land. Like the proposed provisions for part 162, the Secretary may have a non-trust obligation to the owners of the non-trust interests to account for the trust income received on

behalf of Indian landowners from permits on the undivided lands. We request comments on how to resolve the conflict between the owners of non-trust interests on undivided lands, and the Secretary's trust responsibility to Indian landowners.

To ensure the preservation and proper use of trust lands, the proposed subpart B would make clear that, under the AIARMA, the Secretary would require permittees to conduct grazing operations in accordance with tribal goals and priorities for multiple use, sustained yield, agricultural resource management planning and sound conservation practices. Subpart B would also require permittees to fulfill all financial obligations to the Indian landowners and to conduct only those activities authorized by the grazing permit. Failure by a permittee to meet these expectations may result in an imposition of fines or penalties under subpart H, "Permit Violations" or subpart I, "Trespass" of the proposed regulation to protect the interests of the Indian landowners.

Subpart C, "Land Operations and Management," describes how the BIA proposes to clarify how range units and grazing capacity are established in consultation with Indian landowners. Section 166.205 of the subpart changes current practice in that the BIA would no longer include non-permitted land in the calculation of grazing capacity, but rather would limit the determination of grazing capacity to the Indian land that is included in the permit.

All grazing permits issued under this proposed part would have to be consistent with an agricultural resource management plan prepared, in accordance with the AIARMA, by a tribe or by the BIA in consultation with a tribe. To ensure that a permittee's intended objectives regarding animal husbandry and other grazing issues represent sound practice, the regulation proposes that a conservation management plan be developed for each permit. The conservation management plan would be consistent with the tribe's approved agricultural resource management plan.

Subpart D, "Tribal Policies and Laws Pertaining to Permits," consistent with the AIARMA, would make clear that when authorized by an appropriate tribal resolution, the Secretary will comply with certain general policies pertaining to permitting on Indian agricultural lands as described above with respect to the proposed regulations for 25 CFR Part 162—Leases and Permits on Indian Land. Also consistent with the AIARMA and the proposed regulations for part 162, the proposed

subpart D would provide that the Indian landowners of at least 50% of the beneficial interest in a tract of agricultural land could exempt their land from the Secretary's implementation of a tribe's general policy by submitting a written request to the BIA.

Under proposed subpart D, tribal law and ordinances, including laws regulating the environment, cultural or historic preservation, land use and other activities under tribal jurisdiction, will apply to grazing permits on Indian agricultural lands unless such tribal laws and ordinances are prohibited by federal law. Tribes are responsible for enforcing tribal laws and ordinances pertaining to Indian agricultural lands with the assistance of the Secretary.

Subpart E, "Grazing Rental Rates," would preserve the ability of tribes to establish grazing rental rates on tribal lands. The BIA would continue to set the grazing rental rates for individually owned Indian land. The subpart clarifies the procedures by which tribes may set grazing rental rates higher or lower than BIA's established fair annual rental rate.

As trustee, the Secretary must determine the fair annual rental value of Indian trust lands in order to assist Indian landowners in negotiating permits with potential permittees and to determine if a permit is in the best interest of the landowner. The proposed subpart E clarifies that the BIA would determine fair annual rental value for grazing permits on trust lands by appraisal, advertisement, competitive bidding or any other appropriate method that complies with the Uniform Standards of Professional Appraisal Practices (USPAP). The BIA does not intend to specify in part 166 the particular method for appraising trust land; rather, ensuring flexibility in choosing an appraisal method would allow the Secretary to most effectively discharge his responsibility as trustee.

As they have with regard to the proposed 25 CFR Part 162—Leases and Permits on Indian Land, many tribes have expressed a desire that grazing rental payments be made directly to Indian landowners under this proposed part. As stated with regard to the proposed 25 CFR part 162, we recognize the utility of direct payments and do not propose to alter the practice at this time. Nevertheless, we continue to struggle to fashion a system that accommodates both the ability of the Indian landowner to receive lease payments directly from the lessee and the Secretary's legal obligation under the American Indian Trust Fund Management Reform Act to account for that income. The BIA

believes that it may be sufficient to satisfy both interests by establishing direct payment arrangements for leases on tribal lands through contracts or compacts under the Self Determination Act. The BIA requests comments on: (1) The continued need for direct payments on tribal and individual Indian lands; (2) the advisability of contracts or compacts under the Self Determination Act as the sole method for direct payments to tribes; and (3) the compatibility of such payments with the Secretary's legal obligation as trustee to obtain the information regarding payment history that is needed to perform the necessary accounting.

In subpart E, § 166.425 also proposes that the BIA would prorate grazing rental payments made to each owner according to his or her fractional share of each permitted tract of Indian agricultural land. Several tribes have suggested that the BIA should apportion grazing permit revenues to beneficiaries based on the productivity of a tract in situations where the grazing permit includes several discreet parcels of land. Recognizing that the method used for distributing trust income has significant

impact on Indian landowners, the BIA requests comments on methods to prorate grazing rental payments in this manner.

Subpart F, "Administrative and Tribal Fees," would provide a schedule of administrative fees, which varies based on the dollar value of the permit. The subpart provides a minimum and maximum administrative fee amount. The BIA would continue to be able to waive such administrative fees. This subpart also would acknowledge that tribes may establish and collect their own administrative fees.

Subpart G, "Bonding and Insurance Requirements", would clarify current BIA practices by requiring that a bond be provided for each permit acquired to ensure performance and compliance with permit terms. Upon request of an Indian landowner, the BIA may waive the bond requirement. For permits on tribal lands, the proposed subpart recognizes the tribe's ability to negotiate the form of the bond.

Subpart H, "Violations," would provide for action to be taken by the Secretary should we learn that a violation of the terms of a grazing

permit has occurred. This subpart is the same as the requirements stated above in the proposed 25 CFR Part 162—Leases and Permits on Indian Land.

Subpart I, "Trespass," defines trespass under a grazing permit to include any unauthorized occupancy, use of or action on Indian agricultural or government lands assigned to the control of a tribe. Like the proposed 25 CFR part 162—Leases and Permits on Indian Land, above, this subpart would describe the process for trespass notification, enforcement, actions and penalties, damages and costs.

Subpart J, "Appeals," notifies readers that BIA decisions may be appealed under 25 CFR part 2.

Subpart K, "Records" clarifies that records generated for the fulfillment of this part are the property of the United States and must be maintained according to approved records retention procedures.

Subpart L, Agriculture Education, Education Assistance, Recruitment, and Training would outline the provisions for implementing subchapter II of the AIARMA, Education in Agriculture Management.

CROSS REFERENCE WITH EXPLANATION FROM CURRENT TO PROPOSED CITATIONS

Current citation	New citation	Title	Remarks
166.1 .....	166.002 .....	What terms do I need to know? ...	More extensive definition listing.
166.2 .....	(1) .....	Authority .....	Listing of citations only. No narrative provided.
166.3 .....	166.001 .....	What is the purpose of this part?	Encompasses objectives and goals of rulemaking.
166.4 .....	166.106 .....	What provisions must be contained in a permit?	Permit forms include all necessary information on applicable regulations, exemptions, and scope of activity permitted through the form.
	166.300 .....	What tribal policies will we apply to permitting on Indian agricultural lands?.	Qualifies tribal jurisdiction over permitting process.
166.5 .....	166.202 .....	How is a range unit created? .....	Plain language.
166.6 .....	166.204 .....	When is grazing capacity determined?.	Plain language.
166.7 .....	166.102 .....	Who can grant a permit? .....	Incorporates authority of the BIA to grant permits on certain lands.
166.8 .....	166.100 .....	Must Indian owners of Indian land obtain a permit before using land for grazing purposes?.	Explains those lands exempt from BIA permit requirements.
166.9 .....	166.102(b) .....	Who can grant a permit? .....	Explains BIA authority to grant permits to various individuals upon permission from tribe or court(s) of competent jurisdiction.
166.10 .....	166.118 .....	How do I acquire a permit through tribal allocation?	More detailed explanation of eligibility requirements for tribal allocations.
166.11(a) .....	166.117 .....	How do I acquire a permit on Indian land?	Plain language.
166.11(b) .....	166.118 .....	How do I acquire a permit through tribal allocation?	Plain language.
	116.119 .....	How do I acquire a permit through negotiation?	Plain language.

CROSS REFERENCE WITH EXPLANATION FROM CURRENT TO PROPOSED CITATIONS—Continued

Current citation	New citation	Title	Remarks
166.12	166.206	What livestock can I graze on permitted Indian land?	Plain language.
166.13	166.401	How does the Secretary establish grazing rental rates?	More detailed explanation given.
	166.404	Whose grazing rental rate will be applicable for a permit on tribal land?	
	166.405	Whose grazing rental rate will be applicable for a permit on individually owned Indian land?	
	166.406	Whose grazing rental rate will be applicable for a permit on government land?	
166.14	166.107	How long is a permit term?	Plain language.
166.15(a)	166.136	How can Indian land be removed from an existing permit?	More detailed explanation of removal, notices, forms, and timelines for processing.
	166.138	Other than to remove land, how can a permit be amended, modified, assigned, transferred, or subpermitted?	Plain language.
166.15(b)	166.702	What happens if a violation of a permit occurs?	Plain language.
166.16	166.112	Must I comply with any standards of conduct if I am granted a permit?	Incorporates conservation and other resource protections.
166.17	166.208	Can improvements be constructed on permitted Indian land?	More detailed explanation of issue.
	166.209	What happens to improvements constructed on Indian lands when the permit has been terminated?	
166.18	166.504	Are there any other administrative or tribal fees, taxes, or assessments that must be paid?	More detailed fee structure with extensive explanations.
	166.502	Are administrative fees refundable?	
166.19	166.112	Must I comply with any standards of conduct if I am granted a permit?	Incorporates legal parameters for holding a lease.
166.20(a)	166.600	Must a permittee provide a bond for a permit?	Plain language
166.20(b)	166.607	What types of insurance may be required?	Plain language.
166.21	166.421	May a permittee make a grazing rental payment in advance of the due date?	Qualifies when advance payment may be made—not before 30 days before lease goes into effect.
166.22	166.504	Are there any other administrative and or tribal fees, taxes, or assessments that must be paid?	Plain language.
166.23	166.205	Will grazing capacity be increased if I graze adjacent trust or non-trust range-lands not covered by the permit?	Plain language.
166.24	166.800–819	Subpart I—Trespass	Amended and replaced in its entirety. New subpart has sections to address policy, notification, actions upon a finding of trespass, penalties and costs.
166.25	166.207	What must a permittee do to protect livestock from exposure to disease?	Plain language.
New	166.124	Can I use a permit as collateral for a loan?	Clarifies existing practice.
New	166.128–135	Non-trust interests	Provides uniform guidance on dealing w/lands which have non-trust status for permitting.
New	166.300–304	Tribal policies and laws pertaining to permits.	Recognizes and clarifies existing practice.
New	166.410–422	Rental payments	Clarifies existing practice.
New	166.601–605	Bonding requirements.	Explains forms of surety bonds.

CROSS REFERENCE WITH EXPLANATION FROM CURRENT TO PROPOSED CITATIONS—Continued

Current citation	New citation	Title	Remarks
New .....	166.701-703 .....	Notice of violation provisions .....	Clarifies existing practice.
New .....	166.1100-1110 .....	Education provisions. ....	Responds to AIAARMA direction.

<sup>1</sup>Authority.

**III. Public Comments**

The amendments proposed in this rulemaking constitute primarily technical and conforming changes resulting from the reorganization of parts 15, 115, 162, and 166 and implementation of statutory requirements. Many of these revisions are simply plain language changes; however, greater detail and explanation has been included in all the revised parts. Additionally, new sections within these parts address current practice in the field and they are included here to ensure a uniform implementation of Departmental policy and procedure for certain issues. The public is invited to make substantive comment on any of these changes, whether they be with respect to organization or substance.

Two copies of written comments should be submitted to the address indicated in the **ADDRESSES** section of this notice. All comments received will be available for public inspection at the Department of the Interior, Office of the Secretary, MS 7214 MIB, Washington, DC 20240. Comments may also be telefaxed to the following number: 406/329-3021. Email comments will be accepted at: mailroom\_wo\_caet@fs.fed.us All written comments received by the date indicated in the **DATES** section of this notice and all other relevant information in the record will be carefully assessed and fully considered prior to publication of the final rule. Any information considered to be confidential must be so identified and submitted in writing, one copy only. The Department of the Interior reserves the right to determine the confidential status of the information and to treat it according to our determination (See 10 CFR 1004.11).

The Department has concluded that this proposed rule does not involve a substantial issue of fact or law and that the proposed rule should not have substantial impact on the nation's economy or a large number of individuals or businesses. Nevertheless, the Department does plan to hold consultation meetings with impacted tribes, Indian individuals, and tribal entities at given locations as will be noticed by the various regional offices of the BIA. All tribal and non-tribal

persons having interest in this rulemaking are encouraged to participate in these consultations.

**IV. Procedural Requirements**

*A. Review Under Executive Order 12866*

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the BIA must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

- (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;
- (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or
- (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

The rule describes how the federal government will administer its trust responsibility in managing the trust fund accounts. Thus, the impact of the rule is confined to the federal government and the Indian trust beneficiaries and does not impose a compliance burden on the economy generally. Accordingly, it has been determined that this rule is not a "significant regulatory action" from an economic standpoint, or otherwise creates any inconsistencies or budgetary impacts to any other agency or federal program. However, the Department has submitted the revised part 115, Trust Funds for Tribes and Individual Indians, for review by the Office of Information and Regulatory Affairs of the Office of Management and Budget (OMB) as a significant policy matter impacting all federally-recognized Indian tribes and individual Indians. This decision was made because of the magnitude of the monies involved in Indian trust matters and the notion that

any revisions to existing regulations that impact trust account management could have significant impacts on tribal governments, communities and individual Indians. The Department conducted an economic analysis of the revisions to part 115 and found that there were significant benefits in management, security and reporting of trust accounts and only small increases on tribal governments or individual Indians. The increased benefits are better identification of funds, ability to gain performance reports on tribal or individual accounts, clarifications in what funds could be deposited into such accounts, better distribution procedures, and clarifications on when and how such accounts could be restricted or otherwise encumbered. The revisions were found to have potential for administrative savings. The Department is especially interested in receiving comments on the revisions to part 115 and whether the administrative and technical clarifications address tribal concerns for better management of funds held in trust.

*B. Review Under Executive Order 12988*

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, "Civil Justice Reform," 61 FR 4729 (February 7, 1996), imposes on Executive agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. With regard to the review required by section 3(a), section (b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines

issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. The Department of the Interior has determined that, to the extent permitted by law, the proposed regulation meets the relevant standards of Executive Order 12988.

*C. Review Under the Regulatory Flexibility Act*

This proposed rule was reviewed under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, which requires preparation of a regulatory flexibility analysis for any rule which is likely to have significant economic impact on a substantial number of small entities. This proposed rule streamlines the Department's policies, procedures, provisions and clauses that apply to certain Indian trust resources. Indian tribes are not small entities under the Regulatory Flexibility Act. Any impacts on identified small entities affected by this proposed rulemaking are minimal as they would concern a small number of farmers, ranchers, and individuals doing business on Indian lands (*e.g.*, convenience stores, gasoline stations, sundry shops). Accordingly, the Department of the Interior has determined that this proposed regulation will not have a significant economic impact on a substantial number of small entities, and, therefore, no regulatory flexibility analysis has been prepared.

*D. Review Under the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA)*

This proposed rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This proposed rule will not result in an annual effect on the economy of \$100,000,000 or more. The Department is treating each revised part as a unit of the proposed rulemaking and no one unit has an economic impact of \$100,000,000 or more. The revised parts represent programs that are ongoing within the BIA and no new monies are being introduced into the stream of commerce. This proposed rule will not result in a major increase in

costs or prices. The effect of this proposed rulemaking will be to streamline ongoing policies, procedures and management operations of the BIA in their handling of tribal and individual Indian trust resources. No increases in costs for administration will, therefore, be realized and no prices would be impacted through these administrative and technical clarifications of existing field practice. This proposed rulemaking will not result in any significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based companies to compete with foreign-based companies in domestic and export markets. The impact of the proposed rulemaking will be realized by tribal governments and individual Indians having a protected trust resource. These administrative and technical clarifications of Departmental policy and procedure will not otherwise have a significant impact any other small business businesses or enterprises.

*E. Review Under the Paperwork Reduction Act*

This proposed regulation requires an information collection from 10 or more parties and a submission under the Paperwork Reduction Act of 1995, Public Law 104-13, is required. An OMB form 83-I has been reviewed by the Department and sent to OMB for approval. As part of the Department's continuing effort to reduce paperwork burdens, the Department invites the general public to take this opportunity to comment to the Office of Management and Budget (OMB) on the information collections contained in this proposed rulemaking, as required by the Paperwork Reduction Act. Such comments should be sent to the following address: Attention—Desk Officer for the Interior Department, Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street, NW, Washington, DC 20503. Please also send a copy of your comments to the Department at the location noted under the heading **ADDRESSES**. OMB has up to 60 days to approve or disapprove the information collections but may respond after 30

days; therefore, public comments to OMB should be submitted within 30 days in order to assure their maximum consideration. Comments should address: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the BIA, including whether the information shall have practical utility; (2) the accuracy of the BIA's burden estimates; (3) ways to enhance the quality, utility, and clarity of the information collected; and (4) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. The information collection will be used to enable the BIA to better administer the programs subject to this rulemaking (Indian probate, funds held in trust for tribal governments and individual Indians, leasing/permitting, and grazing permits). In all instances, the Department has strived to lessen the burden on the constituent public and ask for only that information that is absolutely essential to the appropriate administration of the programs affected and in keeping with the Department's fiduciary responsibility to federally-recognized tribes.

A synopsis of the information collection burdens for all four parts proposed for regulatory revision are provided below. Take note of the variables used in each information collection estimate—in some instances the standard used for measurement will be a fixed number of occurrences gathered from our various annual reports (*e.g.*, number of probates, number of leases, number of permits, number of account holders, number of appeals in a given year). The explanatory summary of each information collection section identified will indicate what measurable standard has been used as a baseline for further calculations of burden hours (both public and government) and operations and maintenance costs to the government. Burden is defined as the total time, effort, or financial resources expended (including filing fees) by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency.

ESTIMATED BURDEN HOURS

CFR section	Number of respondents	Responses per respondent	Burden per response	Total annual burden (hours)
15.4 Notice of Recordkeeping <sup>1</sup> .....	1	3,164	1 minute .....	53
15.101 Reporting req.—death certificate .....	3,164	1	4 hours .....	12,656

## ESTIMATED BURDEN HOURS—Continued

CFR section	Number of respondents	Responses per respondent	Burden per response	Total annual burden (hours)
15.104 Reporting funeral expenses(¾) .....	2,373	1	2 hours .....	4,746
15.105 Provide probate documents .....	3,164	1	40 hours .....	126,560
15.109 Provide disclaimer information (¼) .....	791	1	1 hour .....	791
15.202 Required elements in probate form <sup>1</sup> .....	1	3,164	40 hours .....	126,560
15.203 Provide response to transmittal .....	3,164	1	5 minutes .....	264
15.303 Provide info. on creditor claim (6 per probate) .....	18,984	1	30 minutes .....	9,492
15.305 Provide info. for priority claims <sup>1</sup> (4 per probate) .....	1	12,656	30 minutes .....	6,328
15.402 Provide info. for filing appeal (¼) .....	791	1	2 hours .....	1,582
15.405 Provide info. for extraordinary appeal process .....	158	1	2 hours .....	316

<sup>1</sup> Indicates Government responsibility in whole or part.

Note: For purposes of this part only, we have used the number 3,164 as the number of decedents' estates that are probated on the average each year. The cost of reporting and recordkeeping by the public is estimated to be approximately \$10/hour. We have used this figure as a medium figure that would indicate the cost of having a form typed, the cost of taking an hour's time off work, the cost of using one's vehicle, plus time spent on the activity, and other miscellaneous costs that may be associated with obtaining the information needed to fulfill this part's information collection requirements. Costs of operation and maintenance for the government were based, for purposes of an average, upon a GS 9/5 salaried person @\$40,017/year or a cost of \$19.24/hour.

## Summary

### Section 15.4 Will the Department probate all the property in Indian estates?

This section notifies the general public and Indian individuals that the Bureau will only probate trust or restricted property of an Indian decedent. We will not probate: (1) Real or personal property in an estate of an Indian decedent that is not trust or restricted property; (2) restricted property derived from allotments in the estates of members of the Five Civilized Tribes; and (3) trust or restricted interests derived from allotments made to Osage Indians in Oklahoma and Osage Headright interests. (It would take approximately one minute to inform an individual of the above.)

Burden hours = number of probates per year (3,164) divided by 60 minutes = # burden hours per year (53). Burden dollars based on a GS-9/5 @\$40,017 per year. \$40,017 divided by # of pay periods per year (26) = \$1,539.24 divided by # hours per pay period (80) = cost per hour (\$19.24). Total annual burden dollars to the government (operations and management) = 53 hours @\$19.24 = \$1,019.72.

### Section 15.101 How do I begin the BIA probate process?

This section tells an individual to report the death of an Indian by bringing in a death certificate to the nearest BIA agency or regional office as soon as possible. If a death certificate does not exist, they are to provide (1) a copy of the obituary notice from a local newspaper; (2) an affidavit of death prepared by someone who knows about the decedent; or (3) any other document that the BIA accepts that verifies the death, such as a church record or a court

record. (Death certificates may be obtained from funeral homes, hospitals, coroner, or State Department of Vital Statistics.) Cost may vary from \$.25 for a photocopy to \$25.00 for a certified copy. The time involved to obtain a death certificate may range from a five minute telephone call to an all day trip to the State Capital. To compute burden hours and burden costs, we will use the mid-range cost of \$10.00 and four hours.

Burden hours = 4 hours multiplied by the number of probates per year (3,164) = 12,656. Note: Approximately 90 percent (%) of the death certificates are supplied by the general public. Ninety percent of 12,656 = 11,390.40 burden hours. The BIA obtains approximately 10 percent (%) of 12,656 = 1,265 burden hours.

Burden costs based on a \$10 death certificate multiplied by the total number of probates per year (3,164) = \$31,640. Approximately 90 percent (%) of this cost is to the general public for a total of \$28,476 and 10% to the BIA for a total of \$3,614 to the government.

### Section 15.104 Can I get assistance immediately for funeral expenses?

This section states that if an individual is responsible for making funeral arrangements of a decedent who had an IIM account, the BIA may release up to \$1,000 for funeral expenses if certain conditions are met. To apply for this benefit, the individual must submit (1) an original itemized receipt, contract or statement for each service; and (2) an affidavit signed by the vendor stating that the service provided is a necessary funeral expense. (We estimate that approximately ¾ of the respondents will request this service.) Itemized statements may take from 5 minutes for computer generated originals to 2 hours

for a hand written statement. We use 2 hours here.

Burden hours = ¾ of 3,164 = 2,373 respondents × 2 hours = 4,746 burden hours and a cost of \$47,460 to the public.

### Section 15.105 Do I need to give the BIA any other documents?

This section requires that respondents supply the BIA with approximately 12 documents, if available. We estimate that it would take respondents approximately 40 hours to acquire all the documents.

Burden hours = 3,164 respondents × 40 hours = 126,560 and a maximum cost to the public of \$1,265,600.

### Section 15.109 Can I give up my interest if I am an heir?

This section states that if an individual wishes to give up their interest in an estate, they must file a notarized statement to the probate specialist. This should take approximately 1 hour to complete and submit to the BIA. Approximately ¼ of the heirs will sign this type of statement.

Burden hours = ¼ × 3,164 = 791 × 1 hour = 791 and a cost of \$7,910 to the public.

### Section 15.202 What must the probate package contain?

This section lists all the documents that must be included in a probate package. It takes the BIA approximately 40 hours to assemble all documents, review for accuracy, arrange in order, make additional copies, etc.

Burden hours = 3,164 probates × 40 hours = 126,560. This represents a total operations and maintenance cost to the government of \$2,437,014.

*Section 15.203 What happens after BIA prepares the probate package?*

Within 120 days the probate specialist will review the probate package and determine whether to send it to the Attorney-Decision maker or the Administrative Law Judge. If we send the probate package to the Attorney-Decision maker, we will notify all potential heirs that they have 20 days in which to tell us that they want a hearing. We estimate that it would take approximately 5 minutes to check the appropriate square on the notice form and prepare an envelope for mailing.

Burden hours = 3,164 × 5 minutes = 264 and a cost of \$2,640 to the public.

*Section 15.303 If the decedent owed me money, how do I file a claim?*

In this section we explain how to submit a claim if the decedent owed you money. We estimate that there would be approximately 6 claims per probate and that it would take approximately 1/2 hour to fill out an itemized statement and make 2 copies.

Burden hours = 6 × 3,164 = 18,984 respondents divided by 1/2 hour = 9,492 and a cost of \$94,920 to the public.

*Section 15.305 Which claims will be paid first?*

We will pay 4 priority claims first: (1) Funeral expenses; (2) medical expenses for last illness; (3) nursing home or other care facility; and (4) claims of the U.S. Government.

Burden hours = 4 respondents per probate = 12,656 divided by 1/2 hour = 6,328 hours. This represents a total

operations and maintenance cost to the government of approximately \$121,749.

*Section 15.402 How do I file an appeal?*

This section explains how to file an appeal. We estimate that approximately 1/4 of the probate cases will be appealed. It should not take over 2 hours to write out a statement of reasons for appeal.

Burden hours = 1/4 of 3,164 = 791 respondents × 2 hours = 1,582 and a cost of \$15,820 to the public.

*Section 15.405 If I miss the 60-day appeal period, do I have any other rights?*

We estimate that approximately 5% of 3,164 probates will be appealed under the extraordinary appeal process.

Burden hours = 5% of 3,164 = 158 × 2 hours = 316 and a cost of \$3,160 to the public.

ESTIMATED BURDEN HOURS <sup>1</sup>

CFR section	Number of respondents	Responses per respondent	Burden per response (hours)	Total annual burden (hours)
115.108 Provide court order to deposit monies in trust account .....	285,000	1	1/2	142,500
115.205 Submit an annual plan prior to distribution of trust funds .....	500	1	16 1/2	8,250
115.210 BIA certifies distribution <sup>1</sup> .....	1	1,400	1/2	700
115.214 Provide info. on unclaimed per capita money .....	75	1	1/2	37 1/2
115.219 Provide form for withdrawal .....	500	1	1 1/4	625
115.320 Provide claim form to stop payment of check .....	285,000	1	1/2	142,500
115.328 Provide form for withdrawal of IIM funds .....	285,000	1	1/2	142,500
115.338 Provide info. on funeral expenses .....	285,000	1	1/2	142,500
115.343 Guardian form contents .....	1	1,425	N/A	N/A
115.353 Form for Social Service Assessment <sup>1</sup> .....	1	5,700	10	57,000
115.355 Provide info. on appeal request .....	285,000	1	1	285,000
115.360 Record keeping req. Review receipts <sup>1</sup> .....	1	5,700	3	17,100
115.363 Provide info. prior to withdrawal of minor's account .....	1,425	1	1/2	712
115.372 Provide info. to restrict your account .....	285,000	1	1	285,000
115.506 Provide form for hearing .....	285,000	1	1 1/2	427,500

<sup>1</sup> Indicates Government responsibility in whole or part.

Note: For purposes of this part only, we have used the number 500 where referring to the estimated tribal respondents. Not all federally-recognized tribes will be making distribution requests; however, the majority will have to provide some information to the BIA to receive a benefit from their accounts. The number of individual respondents is noted, in most instances, as 285,000 which is the number of individual Indian accounts on file. While not all individual Indians will make requests from the BIA for some action on their accounts, we have included the total number here to indicate that they might make such requests. Where the section could apply to both individual Indian accounts and tribal accounts (there are 1,400 tribal accounts), the respondent number is identified as 287,000. The cost of reporting and recordkeeping by the public is estimated to be approximately \$10/hour. We have used this figure as a medium figure that would indicate the cost of having a form typed, the cost of taking an hour's time off work, the cost of using one's vehicle, plus time spent on the activity, and other miscellaneous costs that may be associated with obtaining the information needed to fulfill this part's information collection requirements. The large cost to the public would be realized ONLY if all account holders were providing information to receive a particular benefit. While we do not anticipate this occurrence, we have estimated for the maximum cost to the public for purposes of this review. Costs of operation and maintenance for the government were based, for purposes of an average, upon a GS 9/5 salaried person @\$40,017/year or a cost of \$19.24/hour.

**Summary**

*Section 115.108 When funds are awarded or assessed by a court of competent jurisdiction involving trust lands or resources, what documentation is required to deposit the funds into a trust account?*

This section requires that the respondent forward to OTFM a court order to have certain monies deposited into individual Indian or tribal accounts. The tribe is allowed to deposit

these monies into their trust accounts only if it is operating a program under the Indian Self-Determination and Education Assistance Act.

Burden hours = 287,000 individual Indian and tribal respondents × 1/2 hour = 142,500 hours and a cost of \$1,425,000.

*Section 115.205 Does a tribe have to submit an annual budget for use of its trust funds?*

Approximately 500 tribes would submit an annual plan, even though not

specifically required to do so, showing projected cash flow needs. This enables OTFM to plan investments accordingly. This task would involve a tribal account to spend approximately 16 1/2 hours (2 working days) to make such assessments. Approval by the tribal council or other appropriate tribal

governing body is not included in this burden estimate.

Burden hours = 500 tribal entities  $\times$  16½ hours = 8,250 hours and a cost of \$82,500.

*Section 115.210 How will the BIA assist in the administration of tribal judgment fund accounts?*

The BIA will certify a tribal request for distribution of judgment funds. The review of a tribal request is typically made pursuant to a tribal distribution plan. The plan has been reviewed beforehand, as a rule, and the certification here would not involve a time burden greater than ½ hour per request for the government at a cost of approximately \$13,468.00 (½ hour  $\times$  700 hours  $\times$  \$19.24/hour).

*Section 115.214 May the OTFM return money in a tribal per capita account to a tribal account?*

In the rare instance where tribes have not already filed for a return of unclaimed judgment fund accounts, the procedure pursuant to Pub. L. 87-283 would only require ½ hour to complete—once accounts have been identified. We estimate approximately 75 tribes would have such unclaimed judgment fund accounts necessitating information collection authorization, the completion of a form particular to Pub. L. 87-283.

Burden hours = 75 tribal entities  $\times$  ½ hour = 37½ hours and a cost of \$375.

*Section 115.219 How does a tribe request money from its trust account?*

This provision describes the process involved with tribal requests for funds distribution. Preparing the request and having it signed will take approximately ½ hour. Drafting a tribal resolution and then having it voted through by a tribal executive action would entail approximately 1 additional hour. The alternative authorization noted in 25 CFR 1200 (B) would entail ½ hour preparation by a tribal employee. We estimate a 50/50 split on time with respect to passing a tribal resolution or completing an application pursuant to 25 CFR 1200(B).

Burden hours = 500 tribes  $\times$  1¼ hours (the difference between a tribal resolution and 25 CFR 1200(B)) = 625 hours and a cost of \$6,250.

*Section 115.320 What happens if I lose my check or I do not receive my check because it was stolen?*

All 285,000 individual IIM account holders may claim a lost or stolen check, request a copy of a canceled check, or ask for a stop payment on a check. In any instance, this would not have an hour burden greater than ½

hour to file the proper notice/request for such service.

Burden hours = 285,000 accounts  $\times$  ½ hour = 142,500 hours and a cost of \$1,425,000 to the public.

*Section 115.328 How do I withdraw money from my IIM account?*

These provisions allow individual Indian money account holders to withdraw monies from their account upon a written request. All 285,000 individual Indian money account holders could ask for certain withdrawals from their unrestricted accounts. This direction to the Secretary would take approximately ½ hour.

Burden hours = 285,000 account holders  $\times$  ½ hour = 142,500 hours and a cost of \$1,425,000 to the public.

*Section 115.338 May money in an IIM account be withdrawn after the death of an account holder but prior to the end of the probate proceedings?*

Upon proper authorization, designated persons may apply for emergency funeral expenses (up to \$1,000) from an Indian decedent's IIM account. These expenses will only be paid to the vendor and not to the individual requesting the monies. All 285,000 account holders (or those making their funeral arrangements) may avail themselves of this special distribution of an IIM account under probate. The person making such a request must submit information on the nature of the expense and the person to whom payment is to be directly made.

Burden hours = 285,000 account holders  $\times$  ½ hour = 142,500 hours and a cost of \$1,425,000 to the public.

*Section 115.343 What are the qualifications for guardians who manage IIM accounts for individual account holders?*

This section details the requirements for becoming a guardian of an IIM account. We note this here because it is the form (its necessary contents) that is required by BIA. The BIA estimates 1,425 IIM accounts have guardians assigned to them.

*Section 115.353 What information must be included in a social services assessment?*

The BIA is responsible for making social service assessments, as necessary. The information included in this assessment would entail at least 2 hours of review once the information had been collected. Since the collection would be the primary task of the BIA, it is estimated that 8 hours would be required to compile, review and organize the file for a social service assessment. A total government hour

burden is estimated, therefore, at 10 hours per assessment. There are an average of 5,700 social service assessments completed in any given year.

Burden hours = 5,700 assessments  $\times$  10 hours = 57,000 hours. This represents a government operations and maintenance expense of \$1,096,680.

*Section 115.355 How may I challenge a decision to place my account in supervised status?*

All 285,000 individual Indian account holders could have a supervised status account upon which they could file an appeal for review. The time to make this appeal would be approximately 1 hour, unless extenuating circumstances were involved. This section is really making notice of an appeal—not arguing the appeal itself.

Burden hours = 285,000  $\times$  1 hour = 285,000 hours and a cost of \$2,850,000.

*Section 115.360 What is the review process for a supervised account?*

The BIA must thoroughly review an account that is being supervised to ensure that the monies distributed were pursuant to an approved plan and that supervision is or is not further recommended. This review would entail approximately 2 hours to compile and review information regarding the account and approximately 1 hour to formulate a recommendation—totaling a government burden of 3 hours per review. We have used 5,700 as the number of responses here because there are 5,700 social service assessments completed (in furtherance of a supervised account) done per year.

Burden hours = 5,700 reviews  $\times$  3 hours = 17,100 hours  $\times$  \$19.24/hour = \$329,004 operations and maintenance expense to the government.

*Section 115.363 When will the BIA authorize withdrawals from a minor's account?*

The guardian of a minor's judgment account must make application under Pub. L. 97-458 for withdrawals from such accounts. For other minor's IIM accounts, the guardian must act pursuant to a distribution plan. We have used 1,425 as the number of respondents providing information for authorization for withdrawals since it is estimated that BIA administers 1,425 IIM accounts with a designated guardian. It would take approximately ½ hour to make such application for withdrawal pursuant to Pub. L. 97-458 or pursuant to a simple request in accordance with an approved distribution plan.

Burden hours = 1,425 guardian accounts × ½ hour = 712 hours and a cost of \$7,120.

*Section 115.372 What type of encumbrances may I place on my IIM account?*

All 285,000 individual Indian money account holders may request a voluntary encumbrance upon their account. The BIA will so encumber the account only upon receiving the appropriate information (physician prescription or

recommendation) from the account holder. It is estimated that it would take 1 hour to secure such information and mail or deliver to the appropriate BIA office.

Burden hours = 285,000 account holders × 1 hour = 285,000 hours and a cost of \$2,850,000.

*Section 115.506 How do I request a hearing to challenge the BIA's decision to restrict my IIM account?*

All 285,000 individual Indian money account holders could request a hearing

if their account was being placed under supervision. The BIA will only provide such a hearing, however, if the account holder provides the necessary information in the form of a letter to set up a hearing. This letter of appeal would take approximately 1½ hours to complete and mail.

Burden hours = 285,000 account holders × 1½ hours = 427,500 hours and a cost of \$4,275,000.

ESTIMATED BURDEN HOURS

CFR section	Number of respondents	Responses per respondent	Burden per response	Total annual burden (hours)
162.7 Landowner provides information <sup>1</sup> to make objection to tribal policy	1	500	30 min .....	250
	500	1	30 min .....	250
162.8 Provides notification of new laws <sup>1</sup> .....	1	14,500	30 min .....	7,250
	14,500	1	30 min .....	7,250
162.12 BIA review of all leases <sup>1</sup> .....	1	14,500	2 hrs .....	29,000 hrs
162.14 BIA recordation of all leases <sup>1</sup> .....	1	14,500	30 min .....	7,250 hrs
162.18 BIA approval of lease form <sup>1</sup> .....	14,500	1 hr	1 .....	14,500
	14,500	1 hr	1 hr .....	14,500
162.20 Maintenance of certified plat <sup>1</sup> .....	1	14,500	¼ hr .....	3,625 hrs
162.22 Review/Approve loans <sup>1</sup> .....	1	14,500	1 hr .....	14,500 hrs
	14,500	1	1 hr .....	14,500
162.30 Report disposition of construction improvements <sup>1</sup> .....	1	14,500	1 hr .....	14,500
162.32 Report on rental due dates <sup>1</sup> .....	1	14,500	15 min .....	3,625
162.37 Report on late rental payments <sup>1</sup> .....	1	3,625	15 min .....	906.25
162.48 Bond forms <sup>1</sup> .....	1	14,500	30 min .....	7,250
	14,500	1	1 hr .....	14,500
162.52 Insurance requirements <sup>1</sup> .....	1	14,500	15 min .....	3,625 hrs.
	14,500	1	1 hr .....	14,500
162.61 Negotiated & bidder lease approvals <sup>1</sup> .....	1	14,500	3 hrs .....	43,500
162.68 Report on minor's benefit .....	1	145	30 min .....	72
162.82(a) Provide business records .....	587	1	30 min .....	293.5
162.82(b) Provide appraisals/financial info. ....	587	1	1 hr .....	587
162.82(c) Provide financial statements and Credit reports .....	587	1	1 hr .....	587
162.82(d) New construction requirements .....	587	1	1 hr .....	587
162.83 Deviation of fair annual rental rate .....	725	1	1 hr .....	725
162.113 Provide information to waive fees <sup>1</sup> .....	1	145	30 min .....	72.5
	145	1	1 hr .....	145
162.126 Decision letter—form <sup>1</sup> .....	1	145	30 mins .....	72.5
162.164 Provide info. on disputed trespass .....	3,625	1	30 mins .....	1,812.5

<sup>1</sup> Indicates Government responsibility in whole or part.

Note: There are approximately 51,213 tribal and 50,505 individual Indian surface leases and permits. For purposes of this information collection request, however, we have used the number of 14,500 as the average number of new cases (or lease actions) that occur in a given year. We have used this average number because for the information collection requirements to be triggered a lease action would have to be initiated. Therefore, the use of the larger number (101,718 tribal/individual leases and permits) would not accurately reflect the activity realized by the public or the bureau in the administration of leases and permits on tribal and Indian lands. Other baseline figures are explained in the section summary below. The cost of reporting and recordkeeping by the public is estimated to be approximately \$10/hour. We have used this figure as a medium figure that would indicate the cost of having a form typed, the cost of taking an hour's time off work, the cost of using one's vehicle, plus time spent on the activity, and other miscellaneous costs that may be associated with obtaining the information needed to fulfill this part's information collection requirements. Costs of operation and maintenance for the government were based, for purposes of an average, upon a GS 9/5 salaried person @\$40,071/year or a cost of \$19.24/hour.

**Summary**

*Section 162.7 May individual Indian landowners exempt their land from tribal policies for leasing on Indian agricultural lands?*

Indian landowner(s) of a tract or an individual interest having at least 50% interest in such tract may exempt their Indian land from tribal policies by submitting a written objection to the

BIA. This burden goes to the individual submitting the letter of objection to the BIA and to the BIA for receiving the letter and acting upon the objection and subsequently notifying the respective tribe of the objection and exemption.

Burden hours = 500 (average number of objections received by the BIA) written letters of objection × ½ hour to complete letter and deliver to the BIA = 250 burden hours and a cost of \$2,500

to the public. Burden hours realized by the BIA to receive the letters of objection and subsequently notify the respective tribe of the objection and exemption of certain Indian lands from tribal = 500 × ½ hour = 250 burden hours and an estimated governmental

operations and maintenance cost of \$4,810.

*Section 162.8 What notifications are required that tribal law applies to a lease on Indian agricultural land?*

Tribal laws apply to tribal lands. Therefore, tribes must notify affected landowners of applicable tribal laws. The tribes will have to provide information to the BIA of the content, record of public notice and hearings, and effective dates of new tribal laws. The BIA will, in turn, notify any persons or entities undertaking activities on Indian lands of applicable tribal laws. This information burden goes to the tribe in informing the BIA of the applicable laws and, also, goes to the BIA in properly informing the affected public.

Burden hours = 14,500 leases which may be affected by tribal laws  $\times$   $\frac{1}{2}$  hour to prepare submission of information to the BIA = 7,250 burden hours and a cost to the public of \$72,500. Burden hours realized by the BIA = 14,500 potential tribal submissions  $\times$   $\frac{1}{2}$  hour of time for recordkeeping and notification to affected persons = 7,250 burden hours and an estimated governmental operations and maintenance expense of \$19.24/hour  $\times$  7,250 hours = \$139,490.

*Section 162.12 How will the Secretary decide whether to grant and/or approve a lease?*

This section describes the various elements that go into the BIA review and approval of leases on Indian lands. This includes the preparation of appropriate environmental documents and review of community impacts. This is a governmental burden estimated to take an average of 2 hours per review (some reviews will take less time, but some will consume twice this estimate, so an average of 2 hours is used here)  $\times$  14,500 new cases per year = 29,000 burden hours to the government. The estimated governmental operations and maintenance expense is estimated at \$19.24/hour  $\times$  29,000 burden hours = \$557,960.

*Section 162.14 Must a lease be recorded?*

All leases in excess of 1 year must be recorded. All new cases initiated were in excess of 1 year (in many cases for periods of 5 years or more) and, therefore, we have used the average number of new cases (14,500) as the baseline for computation of the burden hour. Recording each lease would take an average of  $\frac{1}{2}$  hour to process.

Burden hours = 14,500 new cases  $\times$   $\frac{1}{2}$  hour for processing = 7,250 hours. The governmental operations and

maintenance expense is estimated to be \$19.24/hour  $\times$  7,250 burden hours = \$139,490.

*Section 162.18 Is there a standard lease form?*

There is no standard lease form. However, all leases made pursuant to these regulations must be in a form approved by the BIA. It is estimated that it would take both the tribal entity (tribal government/Indian landowner) and a realty specialist and/or clerk an average of 1 hour to complete and review all the components of a proposed lease to ascertain whether or not it contained all the necessary elements for BIA review and approval of the lease.

Burden hours = 14,500 new cases  $\times$  1 hour = 14,500 and a cost to the public of \$145,000 and a governmental operations and maintenance expense of \$19.24/hour  $\times$  14,500 = \$278,980.

*Section 162.20 How is leased land described?*

The land described in a lease must be described by aliquot parts or by a certified plat by a registered surveyor. It is the responsibility of the BIA to provide this accurate description of the land being leased. It is estimated that it would take approximately  $\frac{1}{4}$  hour to review the proposed lease for description by aliquot parts or order a certified plat, receive the plat, and commit its description to the lease document.

Burden hours = 14,500 new cases  $\times$   $\frac{1}{4}$  hour = 3,625 hours and a governmental operations and maintenance expense of \$19.24/hour  $\times$   $\frac{1}{4}$  hour or \$69,745.

*Section 162.22 May a lease be used as collateral for a leasehold?*

The BIA may approve a lease authorizing the lessee to encumber his leasehold interest for the development and improvement of the leased premises. The BIA must approve the leasehold mortgage. This will require that the BIA review the loan documents, the lease, and approve the subsequent loan for development and/or other improvements to the premises. This will involve a burden to the public in providing the appropriate documents for BIA review and the time spend by the BIA for subsequent approval.

Burden hours = 14,500 new cases  $\times$  1 hour = 14,500 burden hours or a cost to the public of \$145,000. Burden hours for the government = \$14,500 new cases  $\times$  1 hour = 14,500 burden hours for a governmental operations and maintenance expense of \$278,980.

*Section 162.30 What happens to improvements constructed on Indian lands when the lease has been terminated?*

If improvements are to be constructed on the land, the lease must have a provision that allows that such improvements remain on the lands upon termination of the lease or are removed within a time period specified in the lease. It is the responsibility of the BIA to ensure that such lease provision is included if improvements are to be constructed on Indian land. This is a form requirement—the inclusion of a provision to the lease. To make the appropriate inquiry of the lessor and lessee regarding construction improvements and include a provision to the lease to stipulate the understanding between lessor and lessee would take approximately 1 hour by the appropriate BIA realty specialist.

Burden hours = 14,500 new cases  $\times$  1 hour = 14,500 hours for a governmental operations and maintenance expense of \$19.24/hour  $\times$  14,500 hours = \$278,980.

*Section 162.32 When must a lease payment be made?*

Rents are due and payable by the payment date specified in the lease. In order to determine whether lease payments are in arrears, the BIA realty specialist or clerk will have to review every rental payment against every lease. It would take an average of  $\frac{1}{4}$  hour to match check to lease  $\times$  14,500 new cases.

Burden hours = 14,500 new cases  $\times$   $\frac{1}{4}$  hour = 3,625 hours and a governmental operations and maintenance expense of \$19.24/hour  $\times$  3,625 = \$69,745.

*Section 162.37 Is there a penalty for late payment on a lease?*

A lease will contain a provision that specifies the late payment penalty that will be assessed and collected for late payment. On the average 25% of the leases are delinquent each year. Therefore, we have used 25% of the number of new cases (14,500) or 3,625 as the baseline for determining burden hours to the government. It would take approximately  $\frac{1}{4}$  hour to assess the delinquency and inform the lessee of the deficiency.

Burden hours = 3,625 delinquent cases  $\times$   $\frac{1}{4}$  hour = 906.25 hours and a governmental operations and maintenance expense of \$19.24/hour  $\times$  906.25 = \$17,432.

*Section 162.48 What forms of bonds will the BIA accept?*

This section describes the various forms of bonds that the BIA will accept as surety of a lease. Each form has its

own special requirements for acceptance. The lessee must provide the BIA with the appropriate bond form and then the BIA, in turn, must process the form and ensure that it is adequate for surety. This imposes a burden on the public of 1 hour to obtain the appropriate bond form and a burden on the government of ½ hour for processing.

Burden hours = 14,500 new cases × 1 hour = 14,500 burden hours and a cost to the public of \$145,000. Burden hours for the government will 14,500 cases × ½ hour = 7,250 burden hours and a governmental operational and maintenance expense of \$19.24/hour × 7,250 burden hours = \$139,490.

*Section 162.52 What types of insurance may be required?*

The BIA may require any or all of the following types of insurance depending upon the activity conducted under the lease: property and liability; casualty; fire, flood, hazardous materials. This will involve a burden upon the public of providing the appropriate insurance documents to the BIA for their review and the BIA subsequently certifying that appropriate insurance has been taken for the particular type of leasehold proposed. The burden hours are estimated to be 1 hour for the lessee and ¼ hour for the BIA to certify once documents have been provided.

Burden hours = 14,500 new cases × 1 hour = 14,500 burden hours and a cost of \$145,000 to the public. Burden hours for the government = 14,500 new cases × ¼ hour = 3,625 burden hours × \$19.24/hour = \$69,745.

*Section 162.61 How do I acquire a lease on Indian land?*

This section describes that there are two ways to acquire a lease on Indian land—by negotiated or advertised bid. Both vehicles involve the collection and maintenance of certain documents by the BIA and its subsequent approval of the lease, in whatever form. This section deals with the mechanisms required by the BIA to secure necessary information and its steps for completing the leasing process. It is estimated that the BIA will spend up to 3 hours to ensure that all elements of a negotiated or advertised bid lease have been met and are properly recorded and maintained for the Indian landowner.

Burden hours = 14,500 new cases × 3 hours = 43,500 hours and a governmental operations and maintenance expense of \$19.24/hour × 43,500 = \$836,940.

*Section 162.68 Must the parents or guardians of minors who own Indian land obtain a lease before using the land?*

A parent, guardian, or other person standing *in loco parentis* does not need to obtain a lease for lands owned by their minor children if those minor children own 100% of the land and the minor children directly benefit from the use. Only 1% of the new leases that are entered into every year (of 14,500 new cases on the average) involve minors who own Indian land. Therefore, we have used 145 minor cases as the baseline to ascertain burden hours to the government. It is the responsibility of the BIA to ascertain whether or not the minor Indian landowners obtain a benefit from a proposed lease; therefore, this section deals only with the estimated ½ hour burden to the government in its administration of each of those 145 minor cases.

Burden hours = 145 minor cases × ½ hour = 72 burden hours for a governmental operations and maintenance expense of \$19.24 × 72 burden hours = \$1,385.

*Section 162.82 What supporting documents must I provide?*

This section details the required supporting documents that must be submitted for certain business leases on Indian lands. This section applies to corporations, limited liability companies, partnerships, joint ventures, or other legal entities doing business on Indian lands. There are approximately 587 new business lease cases per year as reported by the BIA. Therefore, we have 587 business cases as the baseline for determining the burden hours for this section. It is estimated that it would take 30 minutes to provide business records 162.73(a), and 1 hour to provide appraisals, financial information, financial statements, credit reports, and new construction requirement as listed in 162.73 (b)–(d). We have used the total 3 ½ hours as the burden hour × 587 new business leases to determine total burden hours.

Burden hours = 587 new business leases × 3 ½ hours = 2,054.5 total burden hours and a cost to the public of \$20,545.

*Section 162.83 How much rent must a lessee pay?*

This section is noteworthy in that it allows approval of a negotiated lease of tribal land or individually-owned land for less than a fair annual rental if it is in the best interest of the tribe (a determination for the tribe and the BIA) or if the lease is for religious,

educational, recreational or other public purposes or is a lease within the lessor's family. Only 5% of the new cases administered by the BIA fall under this extraordinary less-than-fair-annual-rental provision. Therefore, we have used the number of 725 extraordinary leases as the baseline for determining burden hours to the public. It is estimated that it would take approximately 1 hour for each instance of an extraordinary lease to be explained and otherwise justified to the appropriate BIA realty specialist for subsequent approval.

Burden hours = 725 extraordinary lease cases × 1 hour = 725 total burden hours and a cost to the public of \$7,250.

*Section 162.113 May the Secretary waive administrative fees?*

The administrative fee, based on annual rental, can be waived for a justifiable reason. Only 1% of the new cases administered per year (average 14,500 new cases per year) ask for a waiver of administrative fees. Therefore, we have used the number 145 as the number of waiver cases per year to determine burden hours. It is estimated that it would take ½ hour for a waiver claim to be made by a lessee either in writing or in person to the appropriate BIA realty officer. It is estimated that the government would spend approximately ½ hour to process and approve a waiver request.

Burden hours = 145 waiver cases × 1 hour = 145 hours and a cost to the public of \$1,450. The burden hours for the government = 145 waiver cases × ½ hour for process = 72.5 hours and a governmental operations and maintenance expense of \$1,387.

*Section 162.126 What happens if you do not cure a lease violation?*

This section explains what happens if a lease violation is not cured and gives specific contents required in a letter to the lessee for an alleged lease violation. This a form requirement for the government. Since this instance of non-cured violations occurs only 1% of the time, we have used 1% of the total 14,500 new cases to arrive at the number 145 as the baseline for determining burden hours. It is estimated that it would take the appropriate BIA realty officer ½ hour to prepare and mail a letter with all the attending requirements of this section.

Burden hours = 145 violation cases × ½ hour = 72.25 hours and a governmental operations and maintenance expense of \$19.24/hour × 72.25 hours = \$1,387.

*Section 162.164 What can I do if I receive a trespass notice?*

This section details what a person found in a trespass violation must do within a specific time frame for his case to be finally disposed. The lessee will have to comply with the notice of

trespass or submit an explanation to the BIA as to why a trespass violation should not be rendered. Approximately 25% of the new lease cases have a resulting trespass violation alleged. Therefore, we have used 25% of the 14,500 new cases (3,625) to use as a baseline for determining burden hours.

It is estimated that the submission of an explanation to the appropriate BIA realty officer would entail 1/2 hour to compose and deliver.

Burden hours = 3,625 trespass violation cases × 1/2 hour = 1,812.5 total burden hours and a cost of \$18,125 to the public.

ESTIMATED BURDEN HOURS

CFR section	Number of respondents	Responses per respondent	Burden per response	Total annual burden (hours)
166.106 Form/Requirements <sup>1</sup>	1	1,000	1	1,000
166.108 Permit Recording <sup>1</sup>	1	1,000	1/4	250
166.124 Provide info. for loan <sup>1</sup>	100	1	1/2	50
	1	100	1/2	50
166.122 Form for advertisements <sup>1</sup>	1	1,000	2	2,000
166.123 Forms for permits <sup>1</sup>	1	1,000	1	1,000
	1,000	1	1	1,000
166.138 Forms for amendments, assignments, modifications, subpermits, etc. 1	1	1,000	1/4	250
	1,000	1	1/2	500
166.206 Provide info. on livestock class	200	1	1/2	100
166.207 Provide info. on livestock care <sup>1</sup>	1,000	1	1/4	250
166.209 Removal of improvements <sup>1</sup>	1	100	1/2	50
166.210 Provide tribal integrated resource mgmt. plan	250	1	2	500
166.211 Develop conservation plan <sup>1</sup>	250	1	2	500
166.303 Provide info. on public notices/hearings	250	1	1/2	125
166.601 Provide info on bond requirements <sup>1</sup>	1	1,000	1/2	500
166.602 Forms of bonds <sup>1</sup>	1	1,000	1/2	500
166.607 Provide insurance information <sup>1</sup>	1	1,000	1/4	250
166.703 Form for letter of violation <sup>1</sup>	1	100	1/2	50
166.803 Form for trespass notice <sup>1</sup>	1	100	1/2	50
166.804 Provide info on trespass violation	100	1	1/2	50
166.809 Provide info on ownership	50	1	1/4	12.5

<sup>1</sup> Indicates Government responsibility in whole or part.

Note: There are approximately 1,000 new grazing permit cases each year that are administered through the BIA. Because information collection requirements would not be triggered unless and until a new case is initiated, we have used 1,000 as our baseline for tribal and individual Indian respondents. Other numbers in reference to tribal or individual Indian respondents are explained below. The cost of reporting and record-keeping by the public is estimated to be approximately \$10/hour. We have used this figure as a medium figure that would indicate the cost of having a form typed, the cost of taking an hour's time off work, the cost of using one's vehicle, plus time spent on the activity, and other miscellaneous costs that may be associated with obtaining the information needed to fulfill this part's information collection requirements. For purposes of governmental operations and maintenance expense, we have used the salary of a GS-9/5 as the average salary base. This would be approximately \$19.24/hour and is reflected as such in total governmental expenses.

**Summary**

*Section 166.106 What provisions must be contained in a permit?*

This section describes the minimal elements that must be included in a permit. BIA will not approve a grazing permit unless these elements are present, in some form, to satisfy minimum contractual needs. This is the responsibility of the BIA to review the content and form of the permit. It is estimated that it would take the BIA one hour to review and approve the contents of this form.

Burden hours = 1,000 new permit cases × 1 hour = 1,000 hours for a governmental operations and maintenance cost of \$19.24/hour = \$19,240.

*Section 166.108 Are permits recorded?*

This is a recordkeeping requirement of the BIA. All permits must be recorded

with the Land Titles and Records Offices in the region that covers the permitted area. It is estimated that it would take 1/4 hour to receive and properly record these permits pursuant to 25 CFR 150 *et seq.*

Burden hours = 1,000 new permit cases × 1/4 hour = 250 hours for a governmental operations and maintenance cost of \$19.24/hour = \$4,810.

*Section 166.124 Can I use a permit as collateral for a loan?*

We have estimated that approximately 100 permit holders submit information to the BIA for their approval to encumber the permit interest for the development and improvement of the permitted Indian land. It would take approximately 1/2 hour for the permit holder to submit this information to the BIA and another 1/2 hour for the BIA to

review that information to approve the further encumbrance.

Burden hours = 100 loan applicants × 1/2 hour = 50 burden hours to the public and a cost of \$500 to the public. Burden for the government = 100 loan applicants × 1/2 hour = 50 burden hours for a governmental operations and maintenance cost of \$19.24/hour × 50 hours = \$962.00.

*Section 166.122 How do I acquire an advertised permit through competitive bidding?*

This section describes the 3 ways permits may be acquired. The tribe may grant permits on range units containing trust or restricted land which is entirely tribally owned or which contains only

tribal and government land under the control of the tribe. The BIA will grant permits for range units containing, in whole or part, individually owned Indian land and range units that consist of, in whole or part, tribal or government land. A permit may be acquired, also, be negotiation between the parties. In all instances such permits must be properly advertised, negotiated, or terms otherwise determined by an equitable standard. While this will entail the tribe or Indian individual to do certain things, it is the responsibility of the BIA to ensure that the permitting process has been conducted in accordance with such equitable standards. It is estimated that, whichever method of permit process is used, it will take the BIA approximately 2 hours to review the form and subsequently approve the permit. Agency form 5-5514 would be utilized for portions of this information.

Burden hours = 1,000 new permit cases  $\times$  2 hours = 2,000 burden hours for a governmental operations and maintenance expense of \$19.24/hour  $\times$  2,000 hours = \$38,480.

*Section 166.123 Are there standard permit forms?*

There are standard permit forms, including bid forms, permit forms, and permit modification forms. These forms are available at the various BIA agency offices. We have estimated the hourly burden to be approximately 1 hour for the public in submitting any type of form and approximately 1 hour for the BIA to receive, record and maintain. Agency forms 5-5515, 5-5516, 5-5517, 5-5524, 5-5525, and 5-5528 would be utilized for portions of this information collection.

Burden hours = 1,000 new permit cases  $\times$  1 hour = 1,000 total burden hours and a cost of \$10,000 to the public. Burden hours for the government are estimated at 1,000 new permit cases 1 hour = 1,000 burden hours for a governmental operations and maintenance expense of \$19.24/hours  $\times$  1,000 hours = \$19,240.00.

*Section 166.138 Other than to remove land, how can a permit be amended, modified, assigned, transferred, or subpermitted?*

This section describes the elements that must be included in any permit amendments, modifications, etc. Each instance requires approval by the BIA. It is estimated that it would take approximately  $\frac{1}{2}$  hour for a tribal entity or individual Indian to fill out the requisite form/format for a change in the permit and  $\frac{1}{4}$  hour for the BIA to record and maintain this change. Agency forms

5-5522 and 5-5523 would be utilized for portions of this information collection.

Burden hours = 1,000 new permit cases  $\times$   $\frac{1}{2}$  hour = 500 total burden hours and a cost of \$5,000 to the public. Government burden is calculated at 1,000 new permit cases  $\times$   $\frac{1}{4}$  hour = 250 hours at a governmental operations and maintenance expense of \$19.24/hour  $\times$  250 hours = \$4,810.00.

*Section 166.206 What livestock can I graze on permitted Indian land?*

This section allows the tribe to determine the class of livestock that may be grazed on range units composed entirely of tribal land or in combination with government land, subject to grazing capacity. Also, this section notes that the BIA will adopt the tribal determination of this class of livestock if it is consistent with a determination of grazing capacity. In both instances, information must be provided with respect to the range in question, class of livestock, and an approved grazing determination. The tribal entity or individual Indian would have to provide this information which we have determined would take approximately  $\frac{1}{2}$  hour to compile. This sort of classification on tribal lands would happen on an average of 200 instances per year. Agency forms 5-5526 and 5-5527 could be utilized for portions of this information collection.

Burden hours = 200 new cases  $\times$   $\frac{1}{2}$  hour = 100 total burden hours and a cost of \$1,000 to the public.

*Section 166.207 What must a permittee do to protect livestock from exposure to disease?*

Permittees must vaccinate, treat exposed animals, and restrict movement of exposed or infected livestock. We have used a baseline of 1,000 new permit cases here because all new grazing permits would require that livestock, of whatever nature and in whatever identified range unit, comply with this standard of care. It is estimated that it would take  $\frac{1}{2}$  hour for the tribal entity or individual Indian to provide this information to the appropriate BIA office and  $\frac{1}{2}$  hour for that office to record and process this information for compliance with this health standard.

Burden hours = 1,000 new permit cases  $\times$   $\frac{1}{4}$  hour = 250 total burden hours and a cost of \$2,500 to the public. Burden for the government is estimated at 1,000 new permit cases  $\times$   $\frac{1}{4}$  hour = 250 hours for a governmental operations and maintenance expense of \$19.24/hour  $\times$  250 hours = \$4,810.00.

*Section 166.209 What happens to improvements constructed on Indian lands when the permit has been terminated?*

This section allows improvements to be removed on permitted Indian land if proper provision has been made in the permit. An extension of time may, also, be provided for in the permit's provisions. This is the responsibility of the BIA to review these "removal of improvements" provisions, record them, and allow for removals as prescribed in the permit. Improvements to the land are accounted for in approximately 10% of the new cases in any given year, or approximately 100 cases. It is estimated that it would take  $\frac{1}{2}$  hour to facilitate this recordkeeping.

Burden hours = 100 new cases involving improvements on Indian land  $\times$   $\frac{1}{2}$  hour = 50 hours for a governmental operations and maintenance expense of 50 hours  $\times$  \$19.24/hour = \$962.00.

*Section 166.210 Is an agricultural resource management plan required?*

*Section 166.211 Is a conservation plan required?*

An agricultural resource management plan must be developed either by the tribe or by the BIA in consultation with the affected tribe(s). This plan should be consistent with the tribe's integrated resource management plan. We estimate that tribal conservation officers and/or environmental compliance officers for the tribe, in consultation or not in consultation with the BIA, would require a minimum of 2 hours to work up an agricultural resource management plan consistent with their integrated resource management plan. We have used a baseline of 250 tribes as being the number of tribes in any given year that would be allowing grazing on their lands subject to these plans. This number could be much reduced, depending upon the frequency of newly permitted grazing activities and renewals of existing plans.

Burden hours = 250 tribal entities requiring an agricultural resource management plan  $\times$  2 hours = 500 burden hours and a cost of \$5,000 to the public for such production of plans.

*Section 166.303 What notifications are required that tribal laws apply to permits on Indian agricultural lands?*

Tribal grazing laws apply to permits on tribal and individually owned Indian land under tribal jurisdiction. However, tribes must notify the BIA of the record of public notices and hearings, and the content and effective dates of new tribal grazing laws. We have used a baseline of 250 tribes as providing the BIA

information on such new tribal grazing laws as a high-end average. This number could be greatly reduced in proportion to the number of new grazing laws enacted every year. This notification to the BIA would take approximately  $\frac{1}{2}$  hour for each new instance.

Burden hours = 250 instances of newly enacted tribal grazing laws  $\times \frac{1}{2}$  hour = 125 total burden hours and a cost of \$1,250 to the public.

*Section 166.601 How is the amount of the bond determined?*

The BIA will determine the amount of the bond based upon the value of one year's grazing rental payment, the value of improvements constructed, the cost of performance of any additional obligations, and the cost of restoration and reclamation. In addition, the BIA can adjust the security or bond requirements at any time, depending upon the circumstances. The BIA will collect this information from available sources on file and make such determination of bond amount. It is estimated that it would take approximately  $\frac{1}{2}$  hour to evaluate these variables and determine the appropriate bond.

Burden hours = 1,000 new permit cases  $\times \frac{1}{2}$  hour = 500 hours for a governmental operations and maintenance expense of \$9,620.00

*Section 166.602 What form of bonds will the BIA accept?*

The BIA will only accept bonds in cash, negotiable Treasury securities, certificates of deposit, or irrevocable letters of credit. This is a recordkeeping responsibility of the BIA and is estimated to take approximately  $\frac{1}{2}$  hour to review and accept for appropriate security. Agency forms 5-5519 and 5-5423 can be used for portions of this information collection.

Burden hours = 1,000 new permit cases  $\times \frac{1}{2}$  hour = 500 hours for a governmental operations and maintenance expense of \$9,620.00

*Section 166.607 What types of insurance may be required?*

The BIA may require a permittee to provide insurance in an amount sufficient to protect any improvements on the permit premises, cover losses such as personal injury or death, and protect the landowner's interests. This is a responsibility of the BIA and the agency will review each permit case to determine what sort of insurance coverage is necessary for the proposed permitted use. This review would take approximately  $\frac{1}{4}$  hour to complete.

Burden hours = 1,000 new permit cases  $\times \frac{1}{4}$  hour = 250 burden hours for

a governmental operations and maintenance expense of \$4,810.00.

*Section 166.703 What will a written notice of a violation contain?*

This section details the form the BIA will use to inform a permittee that his permit is in violation. This is a recordkeeping responsibility for the agency and will take approximately  $\frac{1}{2}$  hour to compose and send to the permittee.

Burden hours = 100 permit violations  $\times \frac{1}{2}$  hour = 50 hours for a governmental operations and maintenance expense of \$19.24/hour  $\times$  50 hours = \$962.00

*Section 166.803 How are trespassers notified of a trespass determination?*

This section details what must be included in a written notice of trespass. This is a responsibility of the BIA and would be realized upon approximately 100 alleged trespassers in any given year. To send such a written notice would take approximately  $\frac{1}{2}$  hour in order to compile the particulars of the trespass and properly inform the alleged trespasser of his rights.

Burden hours = 100 trespass violations  $\times \frac{1}{2}$  hour = 50 hours for a governmental operations and maintenance expense of \$19.24/hour  $\times$  50 hours = \$962.00.

*Section 166.804 What can I do if I receive a trespass notice?*

If an alleged trespasser wishes to contest a trespass notice, he must contact the agency in writing to explain why the trespass is in error. We have used 100 trespass violations as the baseline for the computation of burden hours and an estimated  $\frac{1}{2}$  hour to complete a letter of explanation to the agency.

Burden hours = 100 notices of trespass  $\times \frac{1}{2}$  hour to respond = 500 total burden hours and a cost of \$5,000 to the public.

*Section 166.809 What happens after my unauthorized livestock or other property are impounded?*

In those cases where livestock or other property have been impounded due to a trespass violation, the trespasser may redeem his property by providing proof of ownership. We estimate only 50 cases of impoundment per year and the requirement of showing proof of ownership to not exceed  $\frac{1}{4}$  hour.

Burden hours = 50 impoundment cases  $\times \frac{1}{4}$  hour = 12.5 total burden hours and a cost of \$125 to the public.

*F. Review Under Executive Order 13132 Federalism*

This proposed rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. While this proposed rule will impact tribal governments, there is no Federalism impact on the trust relationship or balance of power between the United States government and the various tribal governments affected by this rulemaking. Therefore, in accordance with Executive Order 13132, it is determined that this rule will not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

*G. Review Under the National Environmental Policy Act of 1969*

This proposed rule does not constitute a major Federal action significantly affecting the quality of the human environment. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is necessary for this proposed rule.

*H. Review Under the Unfunded Mandates Reform Act of 1995*

Title II of the Unfunded Mandates Reform Act of 1995, Public Law 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. Under section 202 of the Act, the Department generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to state, local, and tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any one year. This proposed rule will not result in the expenditure by the state, local and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year. The Department, however, has determined that because the proposed rulemaking will uniquely affect tribal governments it will follow Departmental and Administration protocols in consulting with tribal governments on the rulemaking. These consultations will be in keeping with the President's Executive Order 13084, "Consultation and Coordination with Indian Tribal Governments." Consequently, tribal governments will be notified through this publication in the **Federal Register** and through the field offices of the BIA of the

ramifications of this rulemaking. This will enable tribal officials and the affected tribal constituency throughout Indian Country to have meaningful and timely input in the development of the final rule. This will reinforce good intergovernmental relations with tribal governments and better inform, educate, and advise such tribal governments on compliance requirements of the rulemaking.

#### List of Subjects

##### 25 CFR Part 15

Estates, Indians-law.

##### 25 CFR Part 114

Accounting, Indians = business and finance.

##### 25 CFR Part 115

Administrative practice and procedure, Indians-business and finance.

##### 25 CFR Part 162

Indians-lands.

##### 25 CFR Part 166

Grazing lands, Indians-lands, Livestock.

For the reasons stated in the preamble, the Department of the Interior, Bureau of Indian Affairs, proposes to amend 25 CFR as follows:

### PART 15—PROBATE OF INDIAN ESTATES, EXCEPT FOR MEMBERS OF THE FIVE CIVILIZED TRIBES

1. Part 15 is revised to read as follows:

#### Subpart A—Introduction

Sec.

- 15.1 What is the purpose of this part?
- 15.2 What terms do I need to know?
- 15.3 Will the Department probate all the property in Indian estates?
- 15.4 How does the probate process work?

#### Subpart B—Starting the Probate Process

- 15.101 How do I begin the BIA probate process?
- 15.102 May I notify the BIA of a death if I'm not related to the decedent?
- 15.103 Is there a deadline for notifying the BIA of a death?
- 15.104 Can I get assistance immediately for funeral expenses?
- 15.105 Do I need to give the BIA any other documents?
- 15.106 Will the BIA wait to begin the probate process until it is notified of the decedent's death?
- 15.107 Who prepares an Indian probate package?
- 15.108 If the decedent was not an enrolled member of a tribe, but own interests in trust or restricted property, what agency prepares the probate package?
- 15.109 Can I give up my interest in trust or restricted lands or trust funds if I am an heir?

#### Subpart C—Preparing the Probate Package

- 15.201 What will the BIA do with the documents that I provide?
- 15.202 What must the probate package contain?
- 15.203 What happens after the BIA prepares the probate package?
- 15.204 Is there a summary process for distributing a trust estate with cash assets?
- 15.205 Will I be notified where my probate is sent?
- 15.206 When will the BIA refer a probate to the OHA?

#### Subpart D—Claims and Distributions

- 15.301 What does the attorney decision-maker do with the probate package?
- 15.302 What happens if the decedent owes debts?
- 15.303 If the decedent owed me money, how do I file a claim?
- 15.304 When will I know if my claim will be paid?
- 15.305 Which claims will be paid first?
- 15.306 Can the attorney decision-maker reduce claims?
- 15.307 What if there is not enough money in the IIM account to pay all claims?
- 15.308 Will the BIA keep the estate open and use future income to pay claims?
- 15.309 Will the attorney decision-maker authorize payment of interest or penalties on claims?
- 15.310 Will the BIA file tax returns for the decedent or the estate?
- 15.311 When will the BIA send me a copy of the probate decision?
- 15.312 What happens after the decision is made?

#### Subpart E—Appeals

- 15.401 May I appeal the decision of the attorney decision-maker?
- 15.402 How do I file an appeal?
- 15.403 How long do I have to file an appeal?
- 15.404 What will happen to the estate if an appeal is filed?
- 15.405 If I miss the 60-day appeal period, do I have any other rights?

#### Subpart F—Information and Records

- 15.501 If I have a question about a probate case that has been assigned to an attorney decision-maker, may I contact the attorney decision-maker directly?
- 15.502 How can I find out the status of a probate?
- 15.503 What is a nationwide Indian probate tracking system?

**Authority:** Secs. 1, 2, 36 Stat. 855, as amended, 856, as amended, sec. 1, 38 Stat. 588, 42 Stat. 1185, as amended, secs. 1, 2, 56 Stat. 1021, 1022, 25 U.S.C. 372, 373, 374, 373a, 373b. Cross reference: For special rules applying to proceedings in Indian Probate (Determination of Heirs and Approval of Wills, Except for Members of the Five Civilized Tribes and Osage Indians), including hearings and appeals within the jurisdiction of the Office of Hearings and Appeals, see Title 43, Code of Federal Regulations, Part 4, Subpart D; Funds of deceased Indians other than the Five

Civilized Tribe see Title 25 Code of Federal Regulations, Part 115.

#### Subpart A—Introduction

##### § 15.1 What is the purpose of this part?

This part contains the procedures that the Secretary follows to probate the trust estate of a deceased individual Indian who owned trust or restricted property. This part tells you how to file the necessary documents to probate the trust estate.

##### § 15.2 What terms do I need to know?

*ALJ*—Means an administrative law judge or other employee of the Department of the Interior's Office of Hearings and Appeals (OHA) upon whom authority has been conferred by the Secretary to conduct hearings in accordance with 43 CFR part 4 subpart D.

*BIA*—Means the Bureau of Indian Affairs within the Department of the Interior.

*IIM account*—Means Individual Indian Money Account.

*LTRO*—Means the Land Titles and Records Office within the BIA.

*OHA*—Means the Hearings Division, Office of Hearings and Appeals, Department of the Interior.

*Agency*—Means the agency or any other designated office in the BIA having jurisdiction over trust or restricted property and money. This term also means any office of a tribe which has contracted or compacted the probate function.

*Attorney decision-maker*—Means an attorney with the BIA who reviews a probate package, determines heirs and beneficiaries, determines creditors claims, and issues a written decision based on the record.

*Beneficiary*—Means any individual who receives trust or restricted property or money in a decedent's will.

*Day*—Means a calendar day.

*Deciding official* means the official with the delegated authority to make a decision on a probate matter, and may include a BIA regional director, agency superintendent, or field representative, an ALJ or other designated official.

*Decision*—Means a written document issued by the deciding official determining heirs and beneficiaries, approving creditors claims, and ordering distribution of property and money.

*Form OHA-7*—Means a form issued by the OHA which lists data for heirship and family history, and provides information on any wills, trust and restricted property, adoptions, names and addresses of all interested persons.

*Heir*—Means any individual who receives trust or restricted property or

money from a decedent by operation of law.

*Interested person*—Means any potential or actual heir, any beneficiary under a will, any party asserting a claim against a deceased Indian's estate, and any tribe having a statutory option to purchase the trust or restricted property interest of a decedent.

*Intestate*—Means the decedent died without a will.

*Minor*—Means an individual that has not reached the age of majority as defined by the applicable tribal or state law.

*Probate*—Means the legal process by which applicable tribal or State laws affecting the distribution of property is applied to:

- (1) Determine the heirs and beneficiaries of a decedent's trust and restricted real property; and
- (2) Transfer any funds held in trust by the Secretary for a decedent to the heirs, beneficiaries, or other persons or entities entitled by law.

*Probate specialist*—Means a BIA or tribal paralegal trained in Indian probate law.

*Secretary*—Means the Secretary of the Interior or an authorized representative.

*Superintendent or Field*

*Representative*—Means an authorized representative of the Secretary of the Interior who is the officer in charge of a BIA agency or field office.

*Vendor or Creditor*—Means any individual or company who submits a claim for payment from a decedent's estate.

*We*—Means either an official of the BIA or a tribe performing probate functions under a BIA contract or compact.

*Will*—Means a written testamentary document, including any properly executed written changes, called codicils, which was signed by the decedent and was attested by two disinterested adult witnesses, that states who will receive the decedent's trust or restricted property.

*You/I*—Means an interested person, as defined herein, with an interest in the decedent's estate unless a specific section says otherwise.

**§ 15.3 Will the Department probate all the property in Indian estates?**

(a) No. We will probate only the trust or restricted property in the estate of an Indian decedent.

(b) We will not probate:

- (1) Real or personal property in an estate of an Indian decedent that is not trust or restricted property;
- (2) Restricted property derived from allotments in the estates of members of the Five Civilized Tribes (Cherokee,

Choctaw, Chickasaw, Creek and Seminole) in Oklahoma; and

(3) Trust or restricted interests derived from allotments made to Osage Indians in Oklahoma and Osage headright interests.

(c) We will probate trust or restricted property in the estates of members of the Five Civilized Tribes or Osage Indians when that trust or restricted property is derived from other tribal allotments.

**§ 15.4 How does the probate process work?**

The basic steps of the probate process are:

(a) We find out about a person's death (see subpart B of this part for details);

(b) We prepare a probate package which includes documents that you send us (see subpart C of this part for details);

(c) We refer the completed probate package to a deciding official in BIA or OHA (see subpart D of this part for details);

(d) The deciding official decides how to distribute the property (see subparts D and E of this part for details).

**Subpart B—Starting the Probate Process**

**§ 15.101 How do I begin the BIA probate process?**

To begin the probate process, as soon as possible you should contact the nearest BIA agency or regional office where the decedent was enrolled. You must provide a copy of the death certificate, if one exists. If a death certificate does not exist, you may provide one or more of the following:

(a) A copy of the obituary notice from a local newspaper;

(b) An affidavit of death prepared by someone who knows about the decedent; or

(c) Any other document that we accept that verifies the death, such as a church record or a court record.

**§ 15.102 May I notify the BIA of a death if I'm not related to the decedent?**

You do not need to be related to the decedent in order to notify us of the death. You can be a friend, neighbor, or any other interested person.

**§ 15.103 Is there a deadline for notifying the BIA of a death?**

There is no deadline for notifying us of a death. However, you should notify us of a death as soon as possible after the person dies.

**§ 15.104 Can I get assistance immediately for funeral services?**

If you are responsible for making the funeral arrangements of a decedent who

had an IIM account and have an immediate need to pay for funeral arrangements prior to burial, you may make a request to the agency for up to \$1,000 from the decedent's IIM account if the decedent's IIM account has more than \$2,500 in the account at the date of death. The agency may approve reasonable costs for this purpose. We will not pay this money directly to you; we will only pay the persons who provide the funeral services. To apply for this assistance you must submit the following to us:

(a) An original itemized receipt, contract or statement for each service; and

(b) An affidavit signed by the vendor or provider stating that the service rendered is necessary for tribal burial services.

**§ 15.105 Do I need to give the BIA any other documents?**

(a) You must provide us with the following documents and information before we can begin to process the probate package.

(1) Social Security number of the decedent;

(2) The birth certificate or other record of birth;

(3) All death records including those listed in § 15.101;

(4) A list of known creditors and their addresses;

(5) Current names and addresses of potential heirs and beneficiaries;

(6) Any statements renouncing an interest in the estate;

(7) All marriage licenses of the decedent;

(8) All divorce decrees of the decedent;

(9) Adoption and guardianship records;

(10) All original or certified copies of wills and codicils;

(11) Any sworn statements regarding the decedent's family, including any statements of paternity or maternity; and

(12) Additional documents that we request.

(b) You must inform us if any of the documents or information identified in these regulations are not available.

**§ 15.106 Will the BIA wait to begin the probate process until it is notified of the decedent's death?**

No. We may find out about the death of a person without being notified by an interested person. If we do, and if the decedent meets the criteria in § 15.3, we will initiate the process without notification. You should not assume that we will find out about a death. It is still your responsibility to notify us as required by § 15.101.

**§ 15.107 Who prepares an Indian probate package?**

The probate specialist or probate clerk at the agency or tribe where the decedent is an enrolled member will prepare the probate package.

**§ 15.108 If the decedent was not an enrolled member of a tribe, but owns interests in trust or restricted property, what agency prepares the probate package?**

If the decedent was not an enrolled member of a tribe, but owns interests in trust or restricted property, the agency that has jurisdiction over the trust property of the decedent, or the greater amount of trust property will prepare the probate package.

**§ 15.109 Can I give up my interest in trust or restricted lands or trust funds if I believe am an heir?**

(a) If you are a non-Indian, you may give up all or part of your interest by submitting a notarized statement in which you renounce your interest in the estate. You must send the statement to the probate specialist at the agency preparing the probate.

(b) If you are an Indian and you wish to give up all or part of your interest, we must refer your request to OHA in accordance with 43 CFR part 4, subpart D.

(c) You must file your statement renouncing your interest with the OHA or the probate specialist before the deciding official issues an order.

**Subpart C—Preparing the Probate Package**

**§ 15.201 What will the BIA do with the documents that I provide?**

Once we receive the documents that you provide us under § 15.105, the probate specialist or probate clerk will:

(a) Use the documents to prepare a probate package; and

(b) Consult with you and any other sources to obtain any additional information needed for a complete package.

**§ 15.202 What must the probate package contain?**

The probate package must contain all of the following:

(a) A copy of the death certificate, if one exists, or some other reliable evidence of death as required by § 15.101;

(b) A completed Form OHA-7, "Data for Heirship Findings and Family History," certified by the superintendent;

(c) A certified inventory of trust or restricted real property including a description of any income generating activity that may produce income during the probate process;

(d) A copy of the decedent's IIM account ledger showing:

(1) The balance of the account at date of death;

(2) The balance of the account at date of probate package submission; and

(3) An IIM account history for five (5) years previous to the date of death;

(e) All original wills, codicils and any revocations of wills or codicils. We will accept copies if original wills, codicils or any revocations of wills or codicils are unavailable;

(f) All statements renouncing interest;

(g) All documentation of payment of claims paid prior to probate hearing;

(h) Claims of creditors;

(i) Other supporting documents, such as marriage license, divorce decrees, birth certificate, adoption decrees, guardianship decrees, any affidavits (which may include paternity, maternity issues, or adoptions);

(j) Tribal options to purchase interests of a decedent; and

(k) Any other information that may be required at the time of proceedings.

**§ 15.203 What happens after the BIA prepares the probate package?**

Within 120 days after we receive all the documents required by § 15.105 and after all the probate documents listed in § 15.202 are received, a probate specialist will review the probate package and refer it to the superintendent, attorney decision-maker or the appropriate ALJ in the OHA in accordance with §§ 15.204 and 15.206.

**§ 15.204 Is there a summary process for distributing a trust estate with cash assets?**

(a) Yes, when an Indian dies intestate, leaving in a trust estate only trust personal property or cash of a value less than \$5,000, not including any interest that may have accrued after the death of the decedent, the superintendent or the attorney decision-maker will review the probate package, identify the legal heirs and determine the proper distribution of the trust estate.

(b) Within 20 days after receipt of notice under § 15.205, the apparent heirs may request that an ALJ assume jurisdiction and hold a hearing to determine the proper distribution of the trust estate.

(c) Within 60 days after determining the proper distribution of the trust estate, the superintendent or attorney decision-maker will prepare and distribute to the interested persons a memorandum showing the date of the decedent's death and the value and distribution of the trust estate, or refer the probate to an ALJ.

(d) In the disposition of the trust estate, the superintendent or the attorney decision-maker will:

(1) Order the payment of creditors' claims as provided in §§ 15.302-307; and

(2) Order the balance of the trust estate remaining after payment of claims, if any, to be transferred to the legal heirs of the decedent.

(e) Interested persons may appeal a summary distribution determination in accordance with subpart E of this part or 25 CFR part 2.

**§ 15.205 Will I be notified where the probate is sent?**

Yes, the BIA will notify you and post notice of the designated office where the probate has been sent.

(a) After the probate specialist has forwarded the probate package under paragraph (a) of this section, we will notify you where we have sent the probate package:

If we send the probate to	We will send you	And
(1) A superintendent or attorney decision-maker under § 15.204.	A letter that gives you 20 days to tell us if you want the probate package sent to the OHA for a hearing.	If we don't hear from you within the 20 days, we will have the superintendent or the attorney decision-maker process the probate package based on the documents in the probate package.
(2) An attorney decision-maker.	A letter that gives you 20 days to tell us if you want the probate package sent to the OHA for a hearing.	If we don't hear from you within the 20 days, we will have the attorney decision-maker process the probate package based on the documents in the probate package.

If we send the probate to	We will send you	And
(3) The OHA .....	A notification that we are sending the probate to the OHA for a hearing.	We will notify the potential heirs that they may ask the OHA for an in-person hearing at a site convenient to most of the parties, a video conference or teleconference hearing (if available), or a decision based on documents in the probate package.

(b) We will post notice identifying the designated office that has been assigned the probate package. We will post the notice for at least 20 days in five or more conspicuous places in the vicinity of the designated office.

**§ 15.206 When will the BIA refer a probate to the OHA?**

We will refer a probate to the OHA under § 15.204(b) if the probate specialist decides that a referral is appropriate. In deciding whether to refer a probate to the OHA, the probate specialist will consider all of the criteria listed below. The probate specialist will refer a case to the OHA based upon the following criteria:

(a) *Problems with the will.* The probate specialist will refer the case to the OHA if the will:

- (1) Is likely to be contested;
- (2) Is complex or ambiguous; or
- (3) Is of questionable validity.

(b) *Contested claims.* The probate will be referred to the OHA if you:

- (1) Contest a creditor claim; or
- (2) Contest a claim made by a family member.

(c) *Other problems.* The probate will be referred to the OHA if:

- (1) There are substantial questions about family relationships;
- (2) There is a conflict in prior probates;
- (3) There are problems with the evidence;
- (4) The adoption of an heir is questionable;
- (5) You are seeking a presumption of death;
- (6) There are minor heirs whose rights may be jeopardized; or
- (7) The case involves determinations of escheat under 43 CFR 4.205.

**Subpart D—Claims and Distributions**

**§ 15.301 What does the attorney decision-maker do with the probate package?**

The attorney decision-maker reviews the probate package and determines whether the issues of fact or law of the case indicate that the probate package should be referred to the OHA. If the probate package is not referred to the OHA, the attorney decision-maker will:

- (a) Determine validity of the will and any codicils;
- (b) Determine intestate heirs;
- (c) Determine beneficiaries in self-proved wills;
- (d) Approve claims according to §§ 15.302 through 15.310; and
- (e) Issue a written decision.

**§ 15.302 What happens if the decedent owes debts?**

The attorney decision-maker may order payment of some or all of the debts of the decedent.

**§ 15.303 If the decedent owed me money, how do I file a claim?**

If you wish to make a claim against the estate of a decedent, you must submit to us an original and two copies of an itemized statement of the debt showing the amount of the original debt and the remaining balance on the date of the decedent's death as soon as possible. We must receive your claim within 60 days from the date of death to be included as part of the probate file.

**§ 15.304 When will I know if my claim will be paid?**

The attorney decision-maker may direct the payment of some or all of the debts of the decedent after reviewing the probate package. No claim prohibited by 43 CFR part 4, subpart D will be paid. The order to pay claims will be included in the attorney decision-maker's final decision.

**§ 15.305 Which claims will be paid first?**

The first claims to be paid, referred to as priority claims, are listed in paragraphs (a) through (d) of this section. Following payment of the priority claims, the attorney decision-maker will authorize all remaining claims, referred to as general claims. Priority claims that will be paid first are:

- (a) Funeral expenses (including the cemetery marker);
- (b) Medical expenses for the last illness; and
- (c) Nursing home or other care facility expenses.
- (d) A claim of the United States Government.

**§ 15.306 Can the attorney decision-maker reduce claims?**

The attorney decision-maker has the discretion to decide that part or all of an otherwise valid claim is unreasonable and reduce the claim to a reasonable amount.

(a) If a claim is reduced, the attorney decision-maker will authorize payment only of the reduced amount.

(b) The attorney decision-maker may reduce both priority claims and general claims.

**§ 15.307 What if there is not enough money in the IIM account to pay all claims?**

If there is not enough money in the IIM account to pay all claims, the attorney decision-maker will authorize payment of the priority claims first. If there is not enough in the IIM account to pay the priority claims, the attorney decision-maker will authorize payment of the priority claims on a pro rata basis.

**§ 15.308 Will the BIA keep the estate open and use future income to pay claims?**

(a) The attorney decision-maker will review the history of the IIM account and may order the estate to remain open under the following conditions:

If within * * *	The account can generate * * *	Then * * *
(1) 5 years .....	Enough money to pay at least 20 percent of the priority claims.	The attorney decision-maker may order the estate to remain open for up to 5 years to pay priority claims in accordance with §§ 15.305–15.307.
(2) 3 years .....	Enough money to pay all of the priority claims and at least 20 percent of the general claims.	The attorney decision-maker may order the estate to remain open for up to 3 years to pay general claims in accordance with §§ 15.305–15.307.

(b) If the attorney decision-maker decides that the IIM account cannot meet the requirements in paragraph (a)(1) of this section, the estate will be closed and any remaining balance in the IIM account will be distributed to the legal heirs. The unpaid balance of any claims will not be enforceable against the estate or any of its assets.

**§ 15.309 Will the attorney decision-maker authorize payment of interest or penalties on claims?**

No. The attorney decision-maker will not authorize payment of interest or penalties charged after date of death as part of either priority claims or general claims.

**§ 15.310 Will the BIA file tax returns for the decedent or the estate?**

No. It is the responsibility of the administrator of the estate to file any federal or state tax returns that may be required on behalf of the decedent or the estate.

**§ 15.311 When will the BIA send me a copy of the probate decision?**

Within 30 working days after the attorney decision-maker has determined how the estate will be distributed, we will send all interested persons a written decision that identifies the heirs and the distribution of the trust and restricted property, including funds in the IIM account. It will also list the amounts of the claims to be paid. The decision will state what date it is mailed and how you may file an appeal.

**§ 15.312 What happens after the decision is made?**

We will not pay claims or transfer property or money for 60 days after the decision is mailed to the interested persons. After 60 days, if there is no appeal, we will pay claims, transfer property or money according to the decision, and the LTRO will change its land title records for the trust and restricted property in accordance with the decision.

**Subpart E—Appeals**

**§ 15.401 May I appeal the decision of the attorney decision-maker?**

You have a right to appeal the decision made by the attorney decision-maker if you are an interested party and are affected by the probate decision.

**§ 15.402 How do I file an appeal?**

(a) To file an appeal, you may send or deliver a signed, written statement to the superintendent or field representative of the agency where the probate package was assembled that contains:

- (1) The name of the decedent;

(2) A description of your relationship to the decedent;

(3) An explanation of why you are appealing; and

(4) Any errors you believe the attorney decision-maker made.

(b) The superintendent or field representative will notify all other interested parties of the appeal in writing within ten working days from date of receipt of the appeal.

**§ 15.403 How long do I have to file an appeal?**

You must send or deliver your written appeal within 60 days of the date that the attorney decision-maker mailed his decision to you. If you mail your appeal, it must be postmarked within 60 days of the date of the postmark of the decision.

**§ 15.404 What will happen to the estate if an appeal is filed?**

We will refer your appeal to the OHA in accordance with 43 CFR Part 4, Subpart D. We will not pay claims or distribute any funds or property, nor will the LTRO modify the land title records until the appeal has been resolved.

**§ 15.405 If I miss the 60-day appeal period, do I have any other rights?**

(a) Yes. You have a right to file a written statement with the superintendent or field representative asking to have the decision changed for one or more of the following reasons:

- (1) You did not receive notice of the probate;
- (2) You have new evidence or information pertaining to the probate; or
- (3) Known evidence was not included in the probate package.

(b) After we receive your request, we will forward it to the OHA for action in accordance with 43 CFR Part 4, Subpart D. After a request has been filed, we will not distribute any funds or property in the estate until directed by the OHA.

**Subpart F—Information and Records**

**§ 15.501 If I have a question about a probate that has been assigned to an attorney decision-maker, may I contact the attorney decision-maker directly?**

No. In order to avoid communications with the attorney decision-maker that might be interpreted as affecting the distribution of the estate, you should direct your questions to the attorney decision-maker's clerk or the probate specialist.

**§ 15.502 How can I find out the status of a probate?**

You may request information about the status of an Indian probate from any BIA agency or regional office. Information will be retrieved for you

from a nationwide Indian probate tracking system.

**§ 15.503 What is a nationwide Indian probate tracking system?**

A nationwide Indian probate tracking system is an electronic computer program that tracks all Indian probate proceedings that have been filed in BIA or OHA offices.

**PART 114—SPECIAL DEPOSITS—[REMOVED AND RESERVED]**

2. Under authority of 25 U.S.C. 2, 25 U.S.C. 9; Pub. L. 97–100; and Pub. L. 97–257 part 114 is removed and reserved.

**PART 115—TRUST FUNDS FOR TRIBES AND INDIVIDUAL INDIANS**

3. Part 115 is revised to read as follows:

**Subpart A—Purpose, Definitions, and Public Information**

Sec.

115.1 What is the purpose of this part?

115.2 What definitions do I need to know?

**Subpart B—Trust Fund Accounts—Generally**

115.100 Why is money held in trust for tribes and individual Indians?

115.101 What types of accounts are maintained for Indian trust funds?

115.102 What specific sources of money will OTFM accept for deposit into a trust fund account?

**Frequently Asked Questions**

115.103 If a tribe or individual Indian is paid directly under a lease, permit or contract of sale for trust land or trust resources, may the Secretary accept those payments from an account holder for deposit into a trust account?

115.104 If a direct payment for the use or sale of trust lands or resources is returned to the payor as undeliverable, may the payor present the payment to the BIA for deposit into a trust account?

115.105 If a tribe operates a business located on trust or restricted land, may the Secretary accept for deposit into a trust account profits from the business?

115.106 May the Secretary accept for deposit into a trust account money not specified in § 115.102?

115.107 May the Secretary accept for deposit in a trust account money awarded or assessed by a court of competent jurisdiction?

115.108 When funds are awarded or assessed by a court of competent jurisdiction involving trust lands or resources, what documentation is required to deposit the funds into a trust account?

115.109 Will the Secretary accept administrative fees for deposit into a trust account?

115.110 How quickly will payments received on behalf of tribes or individual Indians be deposited?

**Investments and Interest**

- 115.111 Does money in a trust account earn interest?
- 115.112 How does the OTFM invest money in a trust account?
- 115.113 What is the interest rate earned on money in a trust account?
- 115.114 When does money in a trust account start earning interest?

**Subpart C—Tribal Accounts**

- 115.200 When does the OTFM open a tribal account?
- 115.201 How often will a tribe receive information about its trust account(s)?
- 115.202 May a tribe make a request to receive information about its account more frequently?
- 115.203 What information will be provided in a statement of performance?
- 115.204 Will an annual audit be conducted on tribal accounts?
- 115.205 Does a tribe have to submit an annual budget for use of its trust funds?
- 115.206 When a tribe is required to complete a budget for use of its trust funds, must the tribe submit the budget to the BIA for approval?
- 115.207 Does a tribe have any flexibility to modify its budget after the budget has been approved by the BIA?
- 115.208 Is a tribe responsible for expenditures that do not comply with an approved budget for those trust funds?
- 115.209 What will the OTFM consider in deciding how to meet a tribe's projected cash flow needs?
- 115.210 How will the BIA assist in the administration of tribal judgment fund accounts?
- 115.211 If a tribe withdraws money from its trust account for a particular purpose or project, may the tribe redeposit any money that was not used for the particular purpose or project?

**Recovering Unclaimed Judgment Funds**

- 115.212 What happens if a tribal member does not cash his or her judgment per capita check?
- 115.213 What steps will the OTFM take to locate an individual whose judgment per capita check is returned as undeliverable?
- 115.214 May the OTFM return money in a tribal per capita account to a tribal account?

**Investing and Managing Money in Tribal Accounts**

- 115.215 Can tribal trust fund investments made by the Department lose money?
- 115.216 May a tribe recommend how the OTFM invests the tribe's trust funds?
- 115.217 May a tribe directly invest and manage its trust funds?
- 115.218 May a tribe return funds to the OTFM that were previously withdrawn under the Trust Reform Act for investment by the tribe?

**Requesting Money From Tribal Accounts**

- 115.219 How does a tribe request money from its trust account?
- 115.220 May a tribe's request for a withdrawal of money from its trust account be delayed or denied?

- 115.221 How does the OTFM send money to a tribe?

**Subpart D—Individual Indian Money (IIM) Accounts****General Provisions**

- 115.300 What funds are held in an IIM account?
- 115.301 How many IIM accounts should a person have?
- 115.302 How long may I leave money in my IIM account?

**Information About Your IIM Account**

- 115.303 How do I obtain my IIM account balance?
- 115.304 What information will be provided in a statement of performance?
- 115.305 Will an annual audit be conducted on IIM accounts?
- 115.306 When will I receive a statement of performance?
- 115.307 Who has access to information about my account?
- 115.308 If I apply for a loan with a private lender, will the OTFM give the lender information about my account?
- 115.309 What information about an IIM account does the OTFM report to the Internal Revenue Service (IRS)?
- 115.310 How will I know how much income OTFM reported to the IRS?
- 115.311 Who is responsible for filing tax returns on trust income which may be reportable income?
- 115.312 If I apply for government funded public assistance will my IIM account balance be considered in determining my eligibility?

**Moving and Changing Addresses**

- 115.313 If I move to a new address how will I receive money from my IIM account?
- 115.314 How do I give the OTFM my new address?
- 115.315 If I move, will the post office forward my check to my new address?
- 115.316 If I don't have a permanent address or I move frequently, may I receive money from my IIM account?

**Uncashed Checks and Stolen Checks**

- 115.317 How long do I have to cash my IIM check?
- 115.318 What should I do if I cannot cash my check because it is torn or damaged?
- 115.319 How long do I have to request a replacement check?
- 115.320 What happens if I lose my check or I do not receive my check because it was stolen?
- 115.321 How long do I have to file a claim if my check was lost or stolen?
- 115.322 What happens if I do not file a claim for my check within one year from the date on the check?
- 115.323 Does the OTFM charge to stop payment on an IIM check?
- 115.324 Who may authorize a stop payment on my IIM check?

**Depositing Money Into an IIM Account**

- 115.325 May I deposit money into my IIM account?
- 115.326 May I redeposit IIM funds back into my trust account once I receive the money?

- 115.327 If a court orders that money be deposited into my IIM account, will the BIA or the OTFM honor the court order?

**Withdrawing Money From an Unrestricted IIM Account**

- 115.328 How do I withdraw money from my IIM account?
- 115.329 What is "verifiable photo identification"?
- 115.330 What if I do not have any photo identification?
- 115.331 Where should I mail my request for a withdrawal from my IIM account?
- 115.332 How will the OTFM send me my money from my IIM account?
- 115.333 May I authorize the OTFM to make payments directly to a third party on my behalf?
- 115.334 Will the BIA ever withdraw money from my account without my authorization?
- 115.335 May I always withdraw money from my IIM account?
- 115.336 Will I receive notice when money is withdrawn from my IIM account?

**Estate Accounts**

- 115.337 Who inherits the money in an IIM account when an account holder dies?
- 115.338 May money in an IIM account be withdrawn after the death of an account holder but prior to the end of the probate proceedings?
- 115.339 If I am a non-Indian who has a life estate in income-producing trust or restricted property, how do I receive the income?

**Supervised Accounts**

- 115.340 Who receives statements of performance for supervised accounts?
- 115.341 If an account is supervised does the account holder have to have a legal guardian?
- 115.342 Who appoints a legal guardian?
- 115.343 What are the qualifications for guardians who manage IIM accounts for individual account holders?
- 115.344 As a parent with custody of a minor or as a guardian of an account holder, what are my responsibilities?
- 115.345 If I am a parent with custody of a minor or a guardian of an account holder, may BIA disburse funds without my knowledge?
- 115.346 Who receives a copy of an approved distribution plan and any amendments to the annual plan?
- 115.347 What will we do if we find that a distribution plan has not been followed or a guardian or minor's custodial parent has acted improperly in regard to his or her duties involving the trust funds of an account holder?
- 115.348 When will the BIA authorize a withdrawal from a supervised account?

**Supervised Accounts—Adults**

- 115.349 Will the BIA place an adult's account under supervision at the request of the account holder or other interested party?
- 115.350 What is a social service assessment?

- 115.351 What happens once the BIA receives an order from a court of competent jurisdiction?
- 115.352 Who is responsible for performing a social services assessment?
- 115.353 What information must be included in a social services assessment?
- 115.354 Will the BIA notify me if a decision is made to place my account in supervised status?
- 115.355 How may I challenge a decision to place my account in supervised status?
- 115.356 How may I change my account status from supervised to unrestricted?
- 115.357 How will a supervised account be managed?
- 115.358 What must be in a distribution plan?
- 115.359 How may funds in a supervised account be used under a distribution plan?
- 115.360 What is the review process for a supervised account?
- 115.361 If I have a power of attorney for an account holder, may I withdraw money from the account holder's IIM account?
- 115.362 If I am incarcerated will the BIA automatically supervise my account?
- 115.363 How do I continue to receive my IIM funds and statements of performance if I am incarcerated?

#### Supervised Accounts—Minors

- 115.364 When will the BIA authorize withdrawals from a minor's account?
- 115.365 May the BIA permit a parent or legal guardian to receive funds from a minor's IIM account?
- 115.366 Will I automatically receive all my IIM funds when I turn 18?
- 115.367 What do I need to do when I reach the age of majority to access my trust fund account?
- 115.368 Will my account lose its supervised status when I reach the age of majority?
- 115.369 Are there any reasons other than supervision that would prevent me from obtaining my funds once I reach the age of 18?
- 115.370 If I am an emancipated minor may I withdraw funds from my account?

#### Encumbered Accounts

- 115.371 Are all encumbrances on an IIM account the same?
- 115.372 What type of encumbrances may I place on my IIM account?
- 115.373 How may I request a voluntary hold on my account?
- 115.374 May I authorize the OTFM to make third party payments from my IIM account to pay my monthly bills or other obligations?
- 115.375 If I have a voluntary hold on my account, may I make a withdrawal from my account?
- 115.376 How do I remove a voluntary hold from my account?
- 115.377 When may I assign my current account balance and any future income to be deposited into my IIM account directly to a third party?
- 115.378 What amount of my IIM income may I assign directly to a third party for health care emergencies?
- 115.379 How will an assignment of IIM income made directly to a third party for

- health care emergencies be paid from my account?
- 115.380 May I assign future IIM income as security for a debt?
- 115.381 What must a third party do to acquire a right to receive disbursements from my IIM account?
- 115.382 If the court order specifies that my account be encumbered immediately, will the Secretary honor the court order before my time for a hearing has expired?
- 115.383 If I assign my income to a third party for health care emergencies or make an assignment of income as security for a secured loan under the Indian Finance Act, will my account be encumbered immediately?
- 115.384 If I have an involuntary encumbrance on my account, may I make withdrawals from my account?
- 115.385 When will BIA place an involuntary encumbrance on my IIM account?
- 115.386 How does the BIA determine the amount of an involuntary encumbrance?
- 115.387 When will the BIA remove an involuntary encumbrance?
- 115.388 If my account is supervised or involuntarily encumbered, when will the BIA develop a payment schedule?
- 115.389 Will the payment schedule developed to pay a debt or other obligation expire?
- 115.390 If I have multiple encumbrances on my trust account, will there be a priority of payment for those encumbrances?

#### Subpart E—Special Deposit Accounts

- 115.400 Who receives the interest earned on a special deposit account?
- 115.401 When will the money in a special deposit account be credited or paid out to the owner of the funds?
- 115.402 May administrative or land conveyance fees paid as federal reimbursements be deposited in a special deposit account?
- 115.403 May cash bonds (*e.g.*, performance bonds, bid deposits, appeal bonds, *etc.*) be deposited into a special deposit account?
- 115.404 May the BIA deposit into a special deposit account money that is paid prior to approval of a conveyance or contract instrument for land sales, right-of-ways, resource sales, grazing, or leasing, *etc.*?

#### Subpart F—Hearing Process for Restricting an IIM Account

- 115.500 Under what circumstances may the BIA restrict my IIM account through supervision or an involuntary encumbrance?
- 115.501 Will I be notified if the BIA decides to place an involuntary encumbrance on or supervise my account?
- 115.502 How will the BIA notify me of its decision to place a hold on my account?
- 115.503 What happens if the notice by certified mail is returned to the BIA marked undeliverable?
- 115.504 When will the BIA restrict my IIM account once it has decided to involuntarily encumber or supervise my account?
- 115.505 What information will the BIA include in its notice?

- 115.506 How do I request a hearing to challenge the BIA's decision to restrict my IIM account?
- 115.507 When will the BIA conduct a hearing to allow me to challenge its decision to restrict my account?
- 115.508 Will I be allowed to present personal testimony?
- 115.509 Will I be allowed to present witnesses?
- 115.510 Will I be allowed to question opposing witnesses?
- 115.511 May I be represented by an attorney at my hearing?
- 115.512 Will the BIA record the hearing?
- 115.513 Why is the hearing recorded?
- 115.514 How long after the hearing will the BIA make its final decision?
- 115.515 What happens if the BIA decides to supervise my account after my hearing?
- 115.516 What happens if the BIA or OST decides to restrict my account because of an administrative error which resulted in funds that I do not own being paid to me or a third party on my behalf?
- 115.517 If the BIA decides that the restriction on my account will be continued after my hearing, do I have the right to appeal that decision?
- 115.518 If I decide to appeal the BIA's decision made after my hearing, will BIA restrict my account during the appeal?

#### Subpart G—Appeals

- 115.600 Do I have a right to appeal any decision made under this part?

#### Subpart H—Records

- 115.700 Who owns the records associated with this part?
- 115.701 What are a tribe's obligations regarding trust fund records?
- 115.702 How long must a tribe keep its records?

#### Subpart I—Exceptions

- 115.801 Funds of deceased Indians of the Five Civilized Tribes
- 115.802 Assets of members of the Agua Caliente Band of Mission Indians
- 115.803 Osage Agency

**Authority:** R.S. 441, as amended, R.S. 468, R.S. 465; 5 U.S.C. 301; 25 U.S.C. 2; 25 U.S.C. 9; 43 U.S.C. 1457; 25 U.S.C. 4001; 25 U.S.C. 161(a); 25 U.S.C. 162a; 25 U.S.C. 164; Pub. L. 87-283; Pub. L. 97-100; Pub. L. 97-257; Pub. L. 103-412; and Pub. L. 97-458.

#### Subpart A—Purpose, Definitions, and Public Information

##### § 115.1 What is the purpose of this part?

This part sets forth guidelines for the Secretary of the Interior to carry out his trust responsibility to tribes and individual Indians in managing and administering trust assets for the exclusive benefit of tribal and individual Indian beneficiaries.

##### § 115.2 What definitions do I need to know?

*Account holder* means a tribe or a person who owns the funds in a tribal or IIM account.

*Account* means a record of trust funds owned by a tribe or a person.

*Adult* means someone who has reached the age of majority.

*Adult in need of financial management assistance* means an individual who is adjudicated by a court of competent jurisdiction to be in need of financial management assistance, as determined by a psychological or medical assessment that deems the individual incapable of administering or managing property or money and incapable of performing day-to-day living activities.

*Assignment of income* means a transfer of interest for a specific amount of funds in or the total contractual amounts due to be paid into an IIM account within 12 months of the assignment to a third party for a health care emergency. BIA will not be a party to any assignment of income.

*Assignment of income as security* means a transfer of interest for a specific amount of funds in or owed to an IIM account from future IIM income to a third party that is used as collateral for a loan. The assignment of income as security will only be acted upon in the event of default on the loan. The third party must present the assignment to a court of competent jurisdiction to perfect an interest in an IIM account unless the loan being secured is guaranteed under the Indian Finance Act.

*BIA* means the Bureau of Indian Affairs, Department of the Interior, or its authorized representative.

*Cash bond, cash performance bond, surety bond* means a bond for a sum of money to secure an action by the issuer of the bond up to the amount of the bond in the event of a default.

*Court of competent jurisdiction* means a court with jurisdiction over the subject matter, usually a tribal or federal court.

*Day* means a calendar day.

*Department* means the Department of the Interior or its authorized representative.

*Deposits* means receiving funds into a treasury general account normally through a Federal Reserve Bank.

*Emancipated minor* means a person under 18 years of age who is married or who is determined by a court of competent jurisdiction to be legally able to care for himself or herself and to enter into a contract on his or her own behalf.

*Encumber or encumbrance* means a limitation on the access to assets held by the Secretary, such as a claim against a specified amount of funds in an IIM encumbered account.

*Encumbered account* means a trust fund account where some portion of the

proceeds are obligated to third parties by court order or voluntary contractual agreements that have been approved by the BIA.

*Estate account* means an account for a deceased IIM account holder. IIM accounts are classified as estate accounts at the time we receive notification of death and are maintained until the trust estate has been probated and the account balance has been distributed.

*FOIA* means the Freedom of Information Act, 5 U.S.C. 552.

*Guardian* means a person who is legally responsible for the care and management of an individual and his or her estate. This definition includes, but is not limited to, conservator or guardian of the property.

*Guardian bond* means a type of surety bond posted by a guardian. In the event of a finding by a court of competent jurisdiction that there was mismanagement, malfeasance or theft by the guardian, the bond will be turned over to the account holder proportionally to the amount of damage.

*Indian land* means:

(1) Lands held by the United States in trust for a tribe or an individual Indian; or

(2) Lands legally owned in fee simple by a tribe or an individual Indian that are subject to federal restrictions against alienation or encumbrance.

*Indian resources* means any matter derived from Indian land which when extracted or used has economic value.

*Individual Indian Money (IIM) account* means an interest bearing account for trust funds held by the Secretary that belongs to an individual Indian, an heir of an Indian account holder, or a life estate holder of Indian trust assets. These accounts are under the control and management of the Secretary. There are four categories of IIM accounts: unrestricted, restricted-supervised, restricted-encumbered, and restricted estate accounts.

*IRS* means the Internal Revenue Service.

*Judgment funds* means funds awarded by the Indian Claims Commission or the United States Court of Federal Claims, and authorized and appropriated by the Congress of the United States to be used or distributed based on a plan approved by Congress.

*Judgment per capita* means a distribution of funds among persons identified in the settlement or use and distribution plan.

*Judgment per capita IIM account* means an IIM account established for a judgment per capita for minors.

*Legislative settlement* means monetary compensation appropriated by the US Congress as trust funds.

*MSW* means a Master of Social Work degree from an accredited college or university.

*Minor* means a person who has not reached the age of 18, unless a Federal law, a judgment settlement, or a use and distribution plan specifies a different age for distribution of IIM funds.

*Non-compos mentis* means an individual who has been found by a court of competent jurisdiction, based on established criteria that includes a psychological or medical evaluation, to be of unsound mind or incapable of transacting or conducting business and managing his or her own affairs.

*OST* means the Office of the Special Trustee for American Indians, Department of the Interior, or its authorized representative.

*OTFM* means the Office of Trust Funds Management, within the Office of the Special Trustee for American Indians, Department of the Interior, or its authorized representative.

*Perfect* means to present documentation to a neutral party (i.e., the BIA or a court of competent jurisdiction) proving an interest in an IIM account based on an assignment of income or an assignment of income as security.

*Per capita* means a distribution process under which persons entitled to funds receive a share.

*Power of attorney* means an instrument authorizing a person to act as the agent of another. The power may be general or specific.

*Privacy Act* means the Federal Privacy Act, 5 U.S.C. 552a.

*Probate* means the process by which claims against an Indian estate are heard and considered, and then the trust and restricted property are transferred to the decedent's heirs, or other persons or entities entitled by law.

*Resolution* means the formal manner in which a tribal government expresses its legislative will.

*Restricted lands* means land that a tribe or individual Indian holds in fee simple title that is subject to limitations or restrictions against alienation.

*Secretary* means the Secretary of the Interior or an authorized representative; it also means a tribe or tribal organization if that entity is administering specific programs, functions, services or activities, previously administered by the Secretary of the Interior, but now authorized under a Self-Determination Act contract (pursuant to 25 U.S.C. 450f) or a Self-Governance compact (pursuant to 25 U.S.C. 558cc).

*Special deposit account* means a temporary account for the deposit of trust funds that cannot immediately be credited to the rightful account holder.

*Statement of performance* means a quarterly report that identifies the source, type, and status of the funds; the beginning balance; the gains and losses; receipts and disbursements; and the ending balance.

*Supervised account* means an account for minors, emancipated minors, and adults who have been judged to be non-compos mentis or in need of financial management assistance from which disbursements must be approved by the BIA.

*Surety bond* means a contract by which one party agrees to make good up to the amount specified the default or debt of another.

*Tribal account or tribal trust account* generally means an account for a federally recognized tribe that is held in trust by the Secretary.

*Tribal per capita account* means a tribal account for judgment fund checks that have been returned to the Secretary as undeliverable to the account holder or where the judgment fund checks were not cashed by the account holder within 12 months of issuance of the check.

*Tribe* means any Indian tribe, nation, band, pueblo, rancheria, colony, or

community, including any Alaska Native Village or regional or village corporation as defined or established under the Alaska Native Claims Settlement Act which is federally recognized by the U.S. government for special programs and services provided by the Secretary to Indians because of their status as Indians. For this purpose, it also means two or more tribes joined for any purpose, the joint assets of which include funds held in trust by the Secretary.

*Trust account* means a tribal account, an IIM account or a special deposit account for funds held in trust.

*Trust funds* means money that the Secretary must accept into trust and deposits into a tribal account, IIM account, or a special deposit account.

*Trust personalty* means money in an IIM account or owed to a decedent's IIM account at time of death.

*Trust Reform Act* means the American Indian Trust Fund Management Reform Act of 1994, Pub.L. 103-412, 108 Stat. 4239, 25 U.S.C. 4001.

*Unrestricted account* means an IIM account in which an individual Indian may determine the timing and amount of disbursements from the account.

*Us or We* means the Secretary as defined in this part.

*Use and distribution plan* means a document submitted to Congress by the

Secretary on behalf of a tribe or enacted by Congress for the use of judgment funds or legislative document.

*Voluntary hold* means a request by an individual with an unrestricted account to keep his or her trust funds in a trust account instead of having the funds automatically disbursed to the account holder.

*You* means an IIM account holder, or his or her legal guardian.

**Subpart B—Trust Fund Accounts—Generally**

**§ 115.100 Why is money held in trust for tribes and individual Indians?**

Congress has passed a number of laws that require the Secretary to establish trust fund accounts for Indian tribes and certain individual Indians who have an interest in Indian lands and resources or trust assets.

**§ 115.101 What types of accounts are maintained for Indian trust funds?**

Indian trust funds are deposited in tribal accounts, Individual Indian Money (IIM) accounts, and special deposit accounts. The following table provides information on each of these trust accounts.

Type of trust account	Qualified by	Qualified by	Description
Individual Indian Money (IIM) Account.	Unrestricted IIM .....	.....	There are no restrictions on these accounts. Funds may be left on deposit, or paid to the account holder based upon instructions by the account holder
	Restricted IIM .....	Supervised .....	These accounts are established for: <ul style="list-style-type: none"> <li>• Minors,</li> <li>• Emancipated minors,</li> <li>• Adults who are non-compos mentis, and</li> <li>• Adults in need of financial management assistance.</li> </ul> Funds from these accounts can be withdrawn only in compliance with an approved distribution plan.
		Encumbered .....	A restriction is placed on the account until money owed to a third party is paid pursuant to a payment plan. An encumbrance can be placed on an account involuntarily by the BIA. The account holder may withdraw any money above the amount owed to the third party.
Tribal account .....	.....	Estate Account .....	An account for a deceased IIM account holder.
Special Deposit account ...	.....	.....	An account for trust funds that belong to a tribe. An account for the temporary deposit of trust funds that cannot be distributed immediately to its rightful owners.

**§ 115.102 What specific sources of money will be accepted for deposit into a trust fund account?**

For tribal or IIM accounts, OTFM must accept proceeds on behalf of tribes

or individual Indians from any of the following sources:

Sources	Accounts			
	Tribal	Individual Indian money		
		Unrestricted	Restricted supervised	Restricted encumbered
(a) Payments from the United States as a Result of—				
(1) Federal laws requiring deposits in trust accounts .....	✓	✓	✓	✓
(2) Settlement of a claim related to Indian lands or resources that requires the trust funds to be deposited in trust accounts .....	✓	✓	✓	✓
(3) A final order from a United States court for a cause of action directly related to trust resources or assets requiring funds to be deposited in trust accounts .....	✓	✓	✓	✓
(4) Unspent forestry funds specifically appropriated as trust funds to the BIA .....	✓	.....	.....	.....
(5) Certain Federal assistance payments, such as VA benefits, Social Security, or Supplemental Security Income, <i>but only</i> if the account holder has a supervised account <i>and</i> the account holder does not have a legal guardian other than the BIA .....	.....	.....	✓	.....
(b) Payments resulting from—				
(1) Purchase or use of Indian lands or resources, including any late payment penalties, when paid directly to the Secretary .....	✓	✓	✓	✓
(2) Civil penalties for trespass on Indian lands .....	✓	✓	✓	✓
(3) Default or breach of the terms of a contract for the lease or purchase of Indian lands or resources arising from cash performance or surety bonds, or other source(s) .....	✓	✓	✓	✓
(c) Deposits from Indian Tribes—				
(1) Redeposit of tribal trust funds previously withdrawn under an investment plan submitted and approved pursuant to the American Indian Trust Fund Management Reform Act of 1994, Pub.L. 103-412, 108 Stat. 4239, 25 U.S.C. 4001 (Trust Reform Act) .....	✓	.....	.....	.....
(2) Tribal funds derived directly from trust resources .....	✓	.....	.....	.....
(3) Judgment funds legislation settlement withdrawn, but not spent, for a specific project. Documentation showing source of funds is required. ....	.....	.....	.....	.....
(d) Other—				
(1) Interest earned on trust fund deposits .....	✓	✓	✓	✓
(2) Trust to trust transfers of trust funds from tribal accounts to existing IIM accounts of tribal members, or from IIM estate accounts to IIM accounts of heirs pursuant to probate orders .....	.....	✓	✓	✓

**Frequently Asked Questions**

**§ 115.103** If a tribe or individual Indian is paid directly under a lease, permit or contract of sale for trust land or trust resources, may the Secretary accept those payments from an account holder for deposit into a trust account?

No. Tribal and individual account holders should not forward direct payments they receive to the Secretary for deposit into a trust account. The BIA will return such direct payments to the account holders.

**§ 115.104** If a direct payment for the use or sale of trust lands or resources is returned to the payor as undeliverable, may the payor present the payment to the BIA for deposit into a trust account?

Yes. The payor must submit proof of attempted delivery, including additional information that may assist OTFM in ensuring payment to the correct account.

**§ 115.105** If a tribe operates a business located on trust or restricted land, may the Secretary accept for deposit into a trust account profits from the business?

The only funds that will be accepted into trust are those identified in § 115.102.

**§ 115.106** May the Secretary accept for deposit into a trust account money not specified in § 115.102?

No funds will be accepted in trust except from the sources specifically identified in the table in § 115.102.

**§ 115.107** May the Secretary accept for deposit in a trust account money awarded or assessed by a court of competent jurisdiction?

Money awarded or assessed by a court of competent jurisdiction for a violation that affects Indian lands or resources, an approved trust agreement, or a trust land contract may be deposited into a trust account. Other funds awarded by a court of competent jurisdiction may not be deposited into a trust account.

**§ 115.108** When funds are awarded or assessed by a court of competent jurisdiction involving trust lands or resources, what documentation is required to deposit the funds into a trust account?

We must receive a copy of the court's order and the funds to be deposited.

**§ 115.109** Will the Secretary accept administrative fees for deposit into a trust account?

No. Administrative fees are not trust funds. Tribal programs that assess administrative fees may not deposit those funds into a trust account. However, a tribe may deposit administrative fees into a non-interest bearing, non-trust tribal account with the BIA or in a private sector account in accordance with tribal policies.

**§ 115.110** How quickly will payments received on behalf of tribes or individual Indians be deposited?

Generally, deposits will be made within twenty-four hours of the receipt of funds, or no later than the close of business on the next business day following the receipt of funds, in a designated federal depository.

## Investments and Interest

### § 115.111 Does money in a trust account earn interest?

Yes. All money deposited in a trust account is invested and earns interest or yield returns, or both.

### § 115.112 How does the OTFM invest money in a trust account?

The OTFM's investment decisions regarding trust funds are governed by federal statute. See 25 U.S.C. 161(a) and 162a.

### § 115.113 What is the interest rate earned on money in a trust account?

The rate of interest changes based on how the money is invested and how those investments perform.

### § 115.114 When does money in a trust account start earning interest?

Funds must remain on deposit at least one business day before interest is earned to the account. Interest earnings of less than one cent are not credited to any account.

## Subpart C—Tribal Accounts

### § 115.200 When does the OTFM open a tribal account?

A tribal account is opened when the OTFM receives income from the sources described in § 115.102.

### § 115.201 How often will a tribe receive information about its trust account(s)?

The OTFM will send each tribe a statement of performance every quarter, no later than 20 business days after the close of each calendar quarter. The calendar quarters end on March 31, June 30, September 30, and December 31.

### § 115.202 May a tribe make a request to receive information about its account more frequently?

Yes. A tribe may contact the OTFM at any time to:

- (a) Request information about account transactions and balances;
- (b) Make arrangements to access account information electronically; or
- (c) Receive a monthly statement.

### § 115.203 What information will be provided in a statement of performance?

The statement of performance will identify the source, type, and status of the trust funds; the beginning balance; the gains and losses; receipts and disbursements; and the ending account balance.

### § 115.204 Will an annual audit be conducted on tribal accounts?

Each tribe will be notified when the Secretary has caused to be conducted an annual audit on a fiscal year basis of all the trust funds held by the United States

for the benefit of tribes deposited or invested under 25 U.S.C. 162a. This notice will be provided in the first quarterly statement of performance following the audit.

### § 115.205 Does a tribe have to submit an annual budget for use of its trust funds?

(a) Tribes must submit annual budgets to the BIA for:

- (1) Accounts with funds that have specific use and distribution plans;
- (2) Forest land assistance accounts; and
- (3) Other accounts, when required by federal law.

(b) If there is no federal law that requires a tribe to submit an annual budget, a tribe does not need to submit an annual budget. However, tribes are encouraged to voluntarily submit annual projected cash flow needs to the OTFM because the plans assist the OTFM in developing prudent investment strategies to meet the tribe's needs.

### § 115.206 When a tribe is required to complete a budget for use of its trust funds, must the tribe submit the budget to the BIA for approval?

Yes. If a tribe is required to develop a budget for the use of its trust funds, the budget must be submitted to the BIA for approval. The BIA will act on a budget request within thirty days. If BIA, after consultation with the OTFM, approves the budget, the BIA will forward the budget to the OTFM. If the budget is not approved, the BIA will return it to the tribe with an explanation of needed changes and will work with the tribe to obtain approval.

### § 115.207 Does a tribe have any flexibility to modify its budget after the budget has been approved by the BIA?

When the BIA, after consultation with the OTFM, approves the budget, the BIA will specify, by dollar or percentage, the amount allowable for transfer among the approved budget categories. If a tribe wishes to exceed the amount allowed for transfer, an amended budget must be submitted to the BIA for approval. The BIA will approve or disapprove the budget modification request within 30 days. If the budget is not approved, the BIA will return it to the tribe with an explanation.

### § 115.208 Is a tribe responsible for expenditures that do not comply with an approved budget for those trust funds?

Yes. If a tribe expends money for goods or services not within the approved budget, the Secretary may require the tribe to reimburse the trust fund account for those expenditures.

### § 115.209 What will the OTFM consider in deciding how to meet a tribe's projected cash flow needs?

The OTFM, in conjunction with tribal officials, will review:

- (a) The balance of a tribe's trust funds;
- (b) The date when a tribe needs specific funds; and
- (c) Any requirements for the use and distribution of trust funds that were specified in congressional directives, court orders, court-approved settlements, settlement agreements, bond or loan payments, or use and distribution plans.

### § 115.210 How will the BIA assist in the administration of tribal judgment fund accounts?

(a) The BIA will provide technical assistance to a tribe in developing a judgment use and distribution plan if the tribe requests assistance or if Congress directs the BIA to provide that assistance.

(b) The BIA will review all tribal requests for distribution of tribal judgment money and certify to the OTFM that each request complies with any requirements associated with the use of that money found in congressional directives, court orders, court-approved settlements, settlement agreements, bond or loan payments, or use and distribution plans.

### § 115.211 If a tribe withdraws money from its trust account for a particular purpose or project, may the tribe redeposit any money that was not used for the particular purpose or project?

(a) A tribe may redeposit funds not used for a particular purpose or project if the tribe can provide documentation showing the source of the funds and if the funds were withdrawn in accordance with:

- (1) The terms of Trust Reform Act;
- (2) The terms of the legislative settlement; or
- (3) The terms of a judgment use and distribution plan.

(b) Funds withdrawn from a tribe's proceeds of labor account may not be returned to a trust account.

## Recovering Unclaimed Judgment Funds

### § 115.212 What happens if a tribal member does not cash his or her judgment per capita check?

(a) If a tribal member does not cash his or her judgment per capita check within twelve months, the money will be deposited to a tribal per capita account where the funds will be held for the use of the tribal member or for disposition under § 115.214.

(b) If a tribal member's judgment per capita check is returned as undeliverable, the money is

immediately deposited into a tribal per capita account. Funds in a tribal per capita account are for the use of the tribal member or for disposition under § 115.214.

**§ 115.213 What steps will the OTFM take to locate an individual whose judgment per capita check is returned as undeliverable?**

The OTFM will notify a tribe of the judgment fund checks that have been returned as undeliverable and will take reasonable action, including utilizing electronic search tools, to locate the individual entitled to receive the judgment per capita funds after the funds are returned as undeliverable.

**§ 115.214 May the OTFM return money in a tribal per capita account to a tribal account?**

Yes. A tribe may apply under 25 U.S.C. 164 and Pub. L. 87-283, 75 Stat. 584 (1961), to have the unclaimed judgment per capita money returned to its account for the tribe's use after six years have passed.

**Investing and Managing Money in Tribal Accounts**

**§ 115.215 Can tribal trust fund investments made by the Department lose money?**

Yes, a tribal trust fund investment can vary depending on the investment and, including but not limited to, any one or more of the following:

- (a) Current interest rates;
- (b) Whether the investment is held to its maturity; and
- (c) Original purchase price.

**§ 115.216 May a tribe recommend how the OTFM invests the tribe's trust funds?**

(a) Tribes may recommend certain investments to the OTFM, but the recommendations must be in accordance with the statutory requirements set forth in 25 U.S.C. 161a and 162a. The OTFM will make the final investment decision based on prudent investment practices.

(b) Upon request, the OTFM will consult with tribes at least annually to develop investment strategies to accommodate the cash flow needs of the tribe.

**§ 115.217 May a tribe directly invest and manage its trust funds?**

Yes, a tribe may apply to withdraw some or all of its trust funds from the OTFM for management by the tribe. The request for withdrawal of funds must be in accordance with the Trust Reform Act requirements in 25 CFR part 1200 subpart (B).

**§ 115.218 May a tribe return funds to the OTFM that were previously withdrawn under the Trust Reform Act for investment by the tribe?**

Yes, a tribe may return funds withdrawn under the Trust Reform Act to the OTFM, under the following conditions:

(a) A tribe wishing to return funds withdrawn under the Trust Reform Act must make its request in writing to the OTFM.

(b) A tribe may return all or part of the withdrawn funds to the OTFM.

(c) No funds may be redeposited during the first six months after withdrawal.

(d) Funds may only be returned a maximum of twice a year.

(e) The return of trust funds must be in accordance with the Trust Reform Act requirements in 25 CFR part 1200 subpart (C).

**Requesting Money From Tribal Accounts**

**§ 115.219 How does a tribe request money from its trust account?**

(a) Generally, before money may be withdrawn from a tribal trust account:

(1) A tribe must submit to the BIA or the OTFM:

- (i) A written request signed by the proper authorizing officials, and
  - (ii) An approved tribal resolution, or
- (2) A tribe may contact the OTFM to withdraw funds in accordance with the Trust Reform Act and 25 CFR part 1200.

(b) However, by law or regulation additional documentation or information may be required to withdraw certain trust funds. If additional documentation or information is required, OTFM will notify the tribe of the additional requirement(s).

(c) Upon receipt of all necessary documentation, the OTFM will process the request for disbursement and send the tribe the requested amount of money within one business day.

**§ 115.220 May a tribe's request for a withdrawal of money from its trust account be delayed or denied?**

(a) Action on a tribe's request for a withdrawal may be delayed or denied if:

- (1) The tribe did not submit all the necessary documentation;
- (2) The tribe's request is not signed by the proper authorizing officials;
- (3) The tribe's request is in conflict with a settlement agreement or an approved use and distribution plan for the money they requested; or
- (4) The BIA or the OTFM requires clarification regarding the disbursement request.

(b) If action on a tribe's request will be delayed or denied, the BIA or the OTFM will:

(1) Notify the tribe within 10 working days of the date of a request made under § 115.219(a)(1)-(2) or for requests under the Trust Reform Act, and

(2) Provide technical assistance to the tribe to address any problems.

**§ 115.221 How does the OTFM send money to a tribe?**

Whenever possible, funds will be sent electronically to a bank account designated by the tribe. If there are circumstances that preclude electronic payments, the OTFM will mail a check to an address specified by the tribe.

**Subpart D—Individual Indian Money (IIM) Accounts**

**General Provisions**

**§ 115.300 What funds are held in an IIM account?**

See § 115.102 for sources of trust funds that may be deposited into IIM accounts.

**§ 115.301 How many IIM accounts should a person have?**

A person should have only one IIM account unless the account holder is entitled to receive judgment funds in addition to other trust income.

**§ 115.302 How long may I leave money in my IIM account?**

You may leave your funds on deposit in an IIM account for as long as you choose. The only exception applies to non-Indian life estate holders. See § 115.339.

**Information About Your IIM Account**

**§ 115.303 How do I obtain my IIM account balance?**

We will send you a statement of performance every three months. If you need to know the balance of your account between statements, you may call any OTFM office or you may go in person to a BIA or OTFM office to request your current balance.

**§ 115.304 What information will be provided in a statement of performance?**

The statement of performance will identify the source, type, and status of the funds; the beginning balance; the gains and losses; receipts and disbursements; and the ending balance.

**§ 115.305 Will an annual audit be conducted on IIM accounts?**

Each IIM account holder will be notified when the Secretary has caused to be conducted an annual audit on a fiscal year basis of all trust funds held by the United States for the benefit of

individual Indians deposited or invested under 25 U.S.C. § 162a. This notice will be provided in the first quarterly statement of performance following the audit.

**§ 115.306 When will I receive a statement of performance?**

The Department will send each IIM account holder a statement of performance every quarter, not later than 20 business days after the close of a calendar quarter.

**§ 115.307 Who has access to information about my account?**

The only people who may obtain information about your account are:

- (a) You;
- (b) your guardian, if you have a supervised account;

(c) those DOI employees who are specifically authorized by the Secretary to access account information;

(d) any other federal or state agency or tribal program for which you have given a signed authorization;

(e) any third party to whom you have given a signed and notarized statement;

(f) any federal court that orders us to provide the information; and

(g) other parties permitted access under the Privacy Act.

**§ 115.308 If I apply for a loan with a private lender, will the OTFM give the lender information about my account?**

Yes, if you or the private lender provides the OTFM with a signed notarized authorization from you to release the information.

**§ 115.309 What information about an IIM account does the OST report to the Internal Revenue Service (IRS)?**

The OST will report annually to the IRS the account holder's name and address, tax identification number, taxable interest earned, and related earnings information on an IIM account.

**§ 115.310 How will I know how much income is reported to the IRS?**

The account holder will be mailed a copy of the IRS Form 1099 that was sent to the IRS.

**§ 115.311 Who is responsible for filing tax returns on trust income which may be reportable income?**

The following table lists the person responsible for filing taxes for each type of IIM account.

IIM account	Account holder	Tax filer
Unrestricted .....	All .....	Account holder.
Restricted—Supervised .....	non-compos mentis .....	Guardian, if there is one, otherwise the BIA may authorize the use of account funds to pay for the preparation and filing of your tax return.
	minor .....	Parent or guardian.
	emancipated minor .....	Account holder.
	adult in need of financial management assistance.	Guardian, if there is one, otherwise the BIA may authorize the use of account funds to pay for the preparation and filing of your tax return.
Restricted—Involuntary Encumbered.	All .....	Account holder.
Estate account .....	All .....	Administrator or Executor of the estate. If the BIA is administering the trust estate, then the BIA may authorize the use of account funds to pay for the preparation and filing for that portion of the trust estate.
Life estate .....	.....	Account holder.

**§ 115.312 If I apply for government-funded public assistance will my IIM account balance be considered in determining my eligibility?**

You must contact the agency providing the assistance to determine whether your IIM funds will be considered in determining eligibility for service(s).

**Moving and Changing Addresses**

**§ 115.313 If I move to a new address how will I receive money from my IIM account?**

It is your responsibility to give the OTFM your new address so that the OTFM can mail your checks and other information about your account to you.

**§ 115.314 How do I give the OTFM my new address?**

You may give the OTFM or the BIA your new address:

- (a) In person, but you must have your request for a change of address signed by a DOI employee to whom you have shown verifiable photo identification, See § 115.329, or
- (b) Through the mail.

(1) If you mail us a change of address you must include:

- (i) Your name,
- (ii) Your old address,
- (iii) Your new address, and
- (iv) Your notarized signature.

(2) You may also provide any of the following information to assist us in verifying your account:

- (i) Your account number,
- (ii) Your birth date,
- (iii) Your social security number,
- (iv) Your tribal affiliation,
- (v) Your tribal enrollment number (if applicable), and
- (vi) Your phone number.

**§ 115.315 If I move, will the post office forward my check to my new address?**

No. Federal law does not allow the post office to forward checks that are issued by the federal government. You must provide us with a change of address so that your check can be sent directly to your new address.

**§ 115.316 If I don't have a permanent address or I move frequently, may I receive money from my IIM account?**

Yes. You may receive the money in your IIM account, but you must keep us updated on your current bank account information so that we can electronically deposit your funds or your most current address where we can send your checks.

**Uncashed Checks and Stolen Checks**

**§ 115.317 How long do I have to cash my IIM check?**

The check is good for one year from the date printed on the check. If you do not cash your IIM check within one year of the check being issued, the check will be canceled and the money will be redeposited into your IIM account.

**§ 115.318 What should I do if I cannot cash my check because it is torn or damaged?**

If your check is torn or damaged you must contact an OTFM office to request a replacement check.

**§ 115.319 How long do I have to request a replacement check?**

You have one year from the date the check was issued to request a replacement check.

**§ 115.320 What happens if I lose my check or I do not receive my check because it was stolen?**

If you lost your check or if your check was stolen, you must contact the OTFM to file a claim for the amount of the check and to request a stop payment on the check. See § 115.323.

**§ 115.321 How long do I have to file a claim if my check was lost or stolen?**

You have one year from the date on the check.

**§ 115.322 What happens if I do not file a claim for my check within one year from the date on the check?**

If you do not file a claim within one year of the date on the check, one of two things may happen:

(a) If the check has not been cashed within 12 months from the date on the check, the OTFM will re-deposit the money into your IIM account. If you have an unrestricted IIM account, a new check will be automatically sent after the funds have been credited to your account. If your account has a voluntary hold, the money will be credited to your account and will remain in the account until you make a request for withdrawal. If your account is restricted, the money will be credited to your account.

(b) If your check has been cashed by someone else, the money will not be redeposited into your IIM account and you will not be able to request a new check. You may contact the OTFM to request a copy of the canceled check. The OTFM may be able to provide assistance in contacting the proper investigatory officials regarding your check.

**§ 115.323 Does the OTFM charge to stop payment on an IIM check?**

No. The OTFM does not charge for this service.

**§ 115.324 Who may authorize a stop payment on my IIM check?**

Account holders and guardians of account holders and estate administrators may place a stop payment on an IIM check. However, if we send you a check in error, the OTFM may place a stop payment on that check. The OTFM will notify you if it places a stop payment on your check.

**Depositing Money into an IIM Account****§ 115.325 May I deposit money into my IIM account?**

No. You may not deposit money into your IIM account.

**§ 115.326 May I redeposit IIM funds back into my trust account once I receive the money?**

No. IIM funds cannot be redeposited once withdrawn.

**§ 115.327 If a court orders that money be deposited into my IIM account, will the BIA or the OTFM honor the court order?**

If the source of the money to be deposited is included in the chart in § 115.102, we will deposit the funds ordered by a court.

**Withdrawing Money From an Unrestricted IIM Account****§ 115.328 How do I withdraw money from my IIM account?**

(a) If you have an unrestricted IIM account, you may request a withdrawal from your account

(1) In person, but you must have your request for withdrawal signed by a DOI employee to whom you have shown verifiable photo identification, see § 115.329; or

(2) Through the mail, but your signature on your request must be notarized.

(b) You may request that the OTFM:

(1) Make a one time withdrawal for you;

(2) Automatically send you your total account balance when the account balance reaches a predetermined threshold amount; or

(3) Send you a specific amount of money from your account on specific dates.

**§ 115.329 What is "verifiable photo identification"?**

If you make a request in person, you must provide the BIA or the OTFM with one of the following types of photo identification:

(a) A valid driver's license;

(b) A government-issued identification card, such as a passport or a security badge; or

(c) A photo identification card issued by your tribe.

**§ 115.330 What if I do not have any photo identification?**

If you cannot show us verifiable identification with your picture on it, we will talk with you and review information in your file to see if we can be certain that you are who you say you are. If we cannot verify your identity, we will not accept your request to withdraw funds from an IIM account.

**§ 115.331 Where should I mail my request for a withdrawal from my IIM account?**

You may mail your request to your local OTFM office or to one of the regional offices that serves your current address. The address of your local OTFM office is printed on your quarterly statement of performance.

**§ 115.332 How will the OTFM send me my money from my IIM account?**

The OTFM will either:

(a) Make a direct deposit to your checking or savings account at a financial institution. A direct deposit into your checking or savings account will eliminate lost, stolen or damaged checks and the money will be available to you sooner as there is no mail time involved, or

(b) Mail you a check.

**§ 115.333 May I authorize the OTFM to make payments directly to a third party on my behalf?**

If your account balance will cover your payment authorization on the date payment is to be made, you may authorize the OTFM to make payments to third parties on your behalf. See § 115.374.

**§ 115.334 Will the BIA ever withdraw money from my account without my authorization?**

The BIA may withdraw money from your account only after a decision has been made to supervise or involuntarily encumber your IIM account. See subpart F of this part.

**§ 115.335 May I always withdraw money from my IIM account?**

(a) If you have a supervised account, you will not be able to withdraw money from your account without BIA approval. See § 115.348.

(b) If you have an encumbered account and the entire account balance is encumbered, you will not be able to withdraw any money from your account. See § 115.371 *et seq.*

**§ 115.336 Will I receive notice when money is withdrawn from my IIM account?**

All transactions regarding your account will be reflected on your quarterly statement of performance which you should review to ensure that you are aware of all disbursements. In addition, if the OTFM transfers funds electronically to your checking or savings account, we will mail a notice each time that a deposit has been made.

**Estate Accounts****§ 115.337 Who inherits the money in an IIM account when an account holder dies?**

At the end of all probate procedures, funds remaining in a decedent's IIM

account will be distributed or credited from the decedent's IIM account into an IIM account of the decedent's heirs, beneficiaries, or other persons or entities entitled by law to receive the funds. See 25 CFR Part 15.

**§ 115.338 May money in an IIM account be withdrawn after the death of an account holder but prior to the end of the probate proceedings?**

If the IIM account has a minimum balance of \$2,500.00, including any trust funds owed to the IIM account holder or estate on the date of death pursuant to sources of income in section 155.102, anyone responsible for making the funeral arrangements for the deceased account holder may make a written request to the BIA for funeral expenses up to \$1,000.00. Payment will be made directly to the funeral service provider(s).

**§ 115.339 If I am a non-Indian who has a life estate in income-producing trust or restricted property, how do I receive the income?**

If a non-Indian has a life estate in trust or restricted property which is

earning income, the OTFM will open an IIM-life estate account. The OTFM will deposit income from the trust or restricted property into the IIM-life estate account, and will send a check or directly deposit funds into a checking or savings account as soon as practicable after the receipt of the funds into the life estate account. Life estate funds are due to the life estate holder at the time funds are deposited.

**Supervised Accounts**

**§ 115.340 Who receives statements of performance for supervised accounts?**

If the account is for * * *	Then the OTFM will send the statement of performance to * * *
A minor .....	The parent or guardian.
An emancipated minor.	The account holder.
A non-compos mentis	The guardian.
An adult in need of financial management assistance.	The guardian.

**§ 115.341 If an account is supervised does the account holder have to have a legal guardian?**

If an account is supervised and the account holder is * * *	Then the account holder * * *
A minor .....	Must have a parent or other legal guardian.
An emancipated minor.	Is not required to have a guardian; however the account will be supervised.
Non-compos mentis ..	Must have a guardian.
An adult in need of financial management assistance.	Must have a guardian.

**§ 115.342 Who appoints a legal guardian?**

A legal guardian can only be appointed by a tribal court or a federal court, whichever has competent jurisdiction over the Indian individual.

**§ 115.343 What are the qualifications for guardians who manage IIM accounts for individual account holders?**

Qualifications	If the guardian is * * *	
	Related	Not related
Must not be a convicted felon .....	✓	✓
Must be over the age of 18 .....	✓	✓
Must live near the account holder .....	✓	✓
Must complete guardianship training, when required .....	✓	✓
Must have no conflict of interest .....	.....	✓
Must post a surety bond, if required .....	.....	✓

**§ 115.344 As a parent with custody of a minor or as a guardian of an account holder, what are my responsibilities?**

If you are a parent with custody of a minor or a guardian of an individual with a supervised account, you must:

- (a) Work with the BIA to develop and sign an annual distribution plan;
- (b) Follow any applicable court order and the terms of an approved distribution plan;
- (c) Provide receipts for all expenses paid out of the account holder's IIM funds to the BIA social services official;
- (d) Review the statements of performance for the IIM account for errors;
- (e) File tax returns on behalf of the account holder; and
- (f) Notify the BIA social services of any change in circumstances that impairs your performance of your obligations under this part or that threatens the account holder's interest in his or her trust account.

**§ 115.345 If I am a parent with custody of a minor or a guardian of an account holder, may BIA disburse funds without my knowledge?**

No. The BIA will only disburse funds in accordance with an approved distribution plan and the BIA will consult with the guardian/parent to develop the distribution plan.

**§ 115.346 Who receives a copy of an approved distribution plan and any amendments to the annual plan?**

An annual distribution plan, once approved, will be made available to:

- (a) The account holder;
- (b) The parent with custody of a minor;
- (c) The guardian of an account holder; and
- (d) The BIA and the OTFM.

**§ 115.347 What will we do if we find that a distribution plan has not been followed or a guardian or minor's custodial parent has acted improperly in regard to his or her duties involving the trust funds of an account holder?**

If we find that a distribution plan has not been followed, or a guardian or minor's custodial parent has failed to satisfactorily account for expenses or has not used account funds for the primary benefit of the beneficiary, or has otherwise failed to properly execute the payee's duties, we will:

- (a) Notify the guardian and the court which appointed the guardian; and
- (b) Take action to protect the interests of the account holder, which may include
  - (1) Demanding repayment from any person improperly withdrawing or expending trust funds;
  - (2) Proceeding against any bond posted by the guardian;
  - (3) Immediately modifying the distribution plan for up to sixty days, including suspending the authority of a

guardian or minor's custodial parent to make further withdrawals; or

(4) Referring the matter for civil or criminal legal action.

**§ 115.348 When will the BIA authorize a withdrawal from a supervised account?**

The BIA may only authorize withdrawals from a supervised account in accordance with an approved distribution plan or an approved amendment to the distribution plan.

**Supervised Accounts—Adults**

**§ 115.349 Will the BIA place an adult's account under supervision at the request of the account holder or other interested party?**

No. We will not place an adult's account under supervision at the request of the account holder or an interested party without an order by a court of competent jurisdiction stating that the adult is *non compos mentis* or in need of financial management assistance. However, an account holder or interested party may request orally or in writing that the BIA conduct a social services assessment to determine whether the BIA should recommend guardianship proceedings to a court of competent jurisdiction for the account holder.

**§ 115.350 What is a social service assessment?**

A social service assessment is an evaluation of an account holder's circumstances and abilities, including the extent to which the account holder needs assistance in managing his or her affairs.

**§ 115.351 What happens once the BIA receives an order from a court of competent jurisdiction?**

The BIA will perform a social services assessment, if not already completed.

**§ 115.352 Who is responsible for performing a social services assessment?**

A BIA social worker will perform the assessment which must be approved by a BIA social worker who has a Master of Social Work degree.

**§ 115.353 What information must be included in a social services assessment?**

A social services assessment must contain:

(a) Identifying information about the account holder (for example, name, address, age, gender, social security number, telephone number, certificate of Indian blood, education level), family history and medical history of the account holder;

(b) Description of the household composition: Information on each member of the household (e.g., name,

age, and gender) and that person's relationship to the account holder;

(c) The account holder's current resources and future income (e.g., VA benefits, retirement pensions, trust assets, employment income, judgment funds, general assistance benefits, unemployment benefits, social security income, supplemental security income and other governmental agency benefits);

(d) A discussion of the circumstances which justify special services, including ability of the account holder to handle his or her financial affairs and to conduct day-to-day living activities. Factors to be considered should include, but are not limited to:

- (1) Age
- (2) Developmental disability
- (3) Chronic alcoholism or substance abuse
- (4) Lack of family assistance or social support systems, or abandonment
- (5) Self-neglect
- (6) Financial exploitation or abuse
- (7) Physical exploitation, neglect or abuse
- (8) Senility
- (9) Dementia

(e) Documentation supporting the need for assistance (e.g., medical reports, police reports, court orders, letters from interested parties, prior assessments or evaluations, diagnosis by psychologist/psychiatrist);

(f) Summary of findings including proposed services and an annual distribution plan; and

(g) Final recommendation signed by a BIA social worker with a MSW degree.

**§ 115.354 Will the BIA notify me if a decision is made to place my account in supervised status?**

Yes. We will notify you of the decision to place your account under supervision based on a court order. The notice will advise you of your rights to request a hearing to challenge the decision to supervise your account. See subpart F of this part.

**§ 115.355 How may I challenge a decision to place my account in supervised status?**

To challenge a decision by the BIA to supervise your account, you must request a hearing within forty (40) days from the date on the certified mail receipt of the letter that we mailed to you regarding the decision to supervise your account. See subpart F of this part.

**§ 115.356 How may I change my account status from supervised to unrestricted?**

You may petition a court of competent jurisdiction to make a determination that you are capable of managing your financial affairs or not *non compos mentis*. If the court issues

an order declaring that you are capable of managing your financial affairs or are no longer *non compos mentis*, the BIA will honor the court's decision and remove your account from supervision.

**§ 115.357 How will a supervised account be managed?**

The BIA social services staff (in conjunction with a guardian) will:

(a) Evaluate the needs of the account holder;

(b) Develop an annual distribution plan and amendments to the distribution plan, as needed, for approval by the BIA;

(c) Authorize the OTFM to distribute IIM funds in accordance with an approved distribution plan;

(d) Monitor the implementation of the approved distribution plan to ensure that the funds are expended in accordance with the plan;

(e) Review the supervised account every six months or more often as necessary if conditions have changed:

(1) To warrant a recommendation to a court to change the status of the account holder, or (2) to modify the distribution plan.

**§ 115.358 What must be in a distribution plan?**

A distribution plan must contain the following:

(a) Information about the reasons for supervision, including

(1) The date of all applicable guardianship orders and the court that issued them;

(2) The date of the most recent applicable social services assessment and the name(s) of the preparer;

(3) A concise statement of the reason for supervision; and

(4) The name of the person or court who initiated the request for supervision.

(b) The names and identifying information for individuals to whom disbursements may be made, including, as applicable

- (1) A guardian;
- (2) Any third parties, such as landlords or long-term-care facilities, to whom the BIA will make payment; and
- (3) The account holder, if an allowance is to be paid directly.

(c) A description of what disbursements are authorized, including

- (1) The amounts that can be disbursed to each authorized payee;
- (2) The purposes for which disbursement may be made;
- (3) The frequency or dates of authorized disbursements
- (d) Any additional requirements, such as frequency and documents required for an accounting by the guardian;

(e) The dates the disbursement plan was developed, approved, amended, and reviewed, and the date for the next scheduled review;

(f) The signature of the BIA official approving the plan with the following certification:

(1) The plan is in the best interest of the account holder, and

(2) The guardian meets the criteria contained in § 115.314.

(g) The signature of the guardian, with date signed, certifying that he or she has read the plan or had it read to him or her and that the guardian will follow the disbursement plan.

**§ 115.359 How may funds in a supervised account be used under a distribution plan?**

A distribution plan for an individual whose account is supervised may authorize disbursements and expenses for the primary benefit of the account holder. Such expenses may include, among other items, amounts for the account holder's food, clothing, shelter, medical care, transportation, education, institutional care, recreation, and religious observances, and for support of the account holder's minor dependents. Expenses must be reasonable in amount, considering the account holder's needs and available resources.

**§ 115.360 What is the review process for a supervised account?**

A review will be conducted every six months and social services will:

(a) Consult with a guardian to verify that the money was spent in accordance with a distribution plan by

(1) Reviewing the receipts for an account holder's expenses, or

(2) Accepting the court's accounting, if a court is monitoring the guardianship of IIM funds, instead of reviewing receipts from the guardian if that annual review includes accounting for the proceeds of an IIM account;

(b) Review all case worker reports and notes, and any information submitted by the account holder;

(c) Review BIA/OTFM account records to insure that withdrawals and payments were made in accordance with the distribution plan;

(d) Decide whether the distribution plan needs to be modified; and

(e) Evaluate the recommendation made to the court regarding the need for the guardianship of the account holder to continue.

**§ 115.361 If I have a power of attorney for an account holder, may I withdraw money from the account holder's IIM account?**

No. We will not recognize a power of attorney for purposes of distributing

money from an IIM account to anyone other than the account holder.

**§ 115.362 If I am incarcerated will the BIA automatically supervise my account?**

No. Your account will not be automatically supervised just because you are in prison or in jail.

**§ 115.363 How do I continue to receive my IIM funds and statements of performance if I am incarcerated?**

To continue receiving your IIM funds and statements of performance, you must notify the OTFM of your address change in accordance with § 115.326 and the amount of money you wish to receive from your account.

**Supervised Accounts—Minors**

**§ 115.364 When will the BIA authorize withdrawals from a minor's account?**

(a) Judgment fund account: withdrawals may only be made upon BIA approval of an application made under Pub.L. 97-458. See 25 CFR 1.2.

(b) Other trust fund accounts: withdrawals may only be made under a BIA-approved distribution plan based on a justified need for the minor's health, education, or welfare.

**§ 115.365 May the BIA permit a parent or legal guardian to receive funds from a minor's IIM account?**

The BIA will not permit a minor's parent or guardian to withdraw funds unless it is in accordance with an approved distribution plan. See § 115.345.

**§ 115.366 Will I automatically receive all my IIM funds when I turn 18?**

No. We will not automatically send your IIM funds to you when reach the age of majority.

**§ 115.367 What do I need to do when I reach the age of majority to access my trust fund account?**

You must contact the OTFM to request the withdrawal of any or all of your IIM funds.

**§ 115.368 Will my account lose its supervised status when I reach the age of majority?**

Your account status will no longer be supervised when you reach the age of majority, unless a court of competent jurisdiction has found you to be *non compos mentis* or in need of financial management assistance and the BIA has decided to supervise your account.

**§ 115.369 Are there any reasons other than supervision that would prevent me from obtaining my funds once I reach the age of 18?**

(a) If you have a judgment fund account, a tribal use and distribution

plan for judgment funds may contain restrictions or requirements that must be met prior to obtaining your money once you turn 18 years of age.

(b) If your account has tribal per capita funds, the tribe may specify that additional requirements be met prior to obtaining these funds.

**§ 115.370 If I am an emancipated minor may I withdraw funds from my account?**

(a) For a judgment fund account: An emancipated minor may not make withdrawals from his or her account until the individual is no longer a minor. Exceptions are only granted upon the approval of an application made under Pub.L. 97-458. See 25 CFR 1.2.

(b) For other IIM accounts: You may be able to withdraw some or all of your funds, but the BIA must approve all requests for withdrawals from your account. You may work with the BIA to develop a distribution plan to access the funds in your account. In no instance will the BIA allow an emancipated minor to make unsupervised withdrawals.

**Encumbered Accounts**

**§ 115.371 Are all encumbrances on an IIM account the same?**

No, there are two types of encumbrances that may be placed on an IIM account:

(a) Encumbrances, including placing a hold on the account, authorized by an account holder; and

(b) Involuntary encumbrances authorized by the BIA.

**§ 115.372 What type of encumbrances may I place on my IIM account?**

(a) You may:

(1) Request a voluntary hold on your account so that your funds remain in your account;

(2) Request that the OTFM make third-party payments out of your account;

(3) Make an assignment of IIM income to a third party but only for health care emergencies under §§ 115.377 and 115.378;

(4) Make an assignment of IIM income as security for a debt to a third party; and

(5) Make an assignment of IIM income as security for a debt that is secured under the authority of the Indian Finance Act.

(b) The table below provides further information on encumbrances that may be placed on your account.

	Unrestricted accounts		Restricted accounts			
	Voluntary hold on an account by the account holder	Payments to third parties as directed by the account holder	Assignment of IIM income for a health care emergency	Assignment of IIM income as security for a loan	Assignment of IIM income as security for loans under the Indian Finance Act	Child support payments
Is BIA a signatory to the encumbrance?	No .....	No .....	No .....	No .....	Yes .....	No.
Is a court order necessary to encumber the account?	No .....	No .....	No .....	Yes .....	No .....	Yes.
May I make withdrawals from my account?	Yes, up to the balance in the account.		Yes, where the account balance exceeds the amount of the encumbrance and based on the payment plan.			
May an account be overdrawn to fulfill an encumbrance?	No .....	No .....	No.			
When will the encumbrance be removed?	OTFM will remove the encumbrance upon request by the account holder.		OTFM will remove the encumbrance upon receipt of notification that the debt or obligation is satisfied or upon expiration of the payment plan.			
Who may authorize the removal of an encumbrance?	Account holder ....	Account holder ....	BIA .....	BIA .....	BIA .....	Court of competent jurisdiction.

**§ 115.373 How may I request a voluntary hold on my account?**

You must contact the OTFM to authorize a voluntary hold on any or all income that is currently in or will be deposited into your IIM account.

**§ 115.374 May I authorize the OTFM to make third-party payments from my IIM account to pay my monthly bills or other obligations?**

You may authorize the OTFM to make third-party payments from your IIM account, but your account balance on the date of payment must be sufficient to cover your authorized payments. If your account balance is insufficient to cover your authorized payment(s) in full, no payment(s) will be made, including partial payment(s). The OTFM will notify you if the payment(s) was not made because of an insufficient account balance.

**§ 115.375 If I have a voluntary hold on my account, may I make a withdrawal from my account?**

You may withdraw any amount up to your current balance.

**§ 115.376 How do I remove a voluntary hold from my account?**

Contact the OTFM to authorize the removal of a voluntary hold.

**§ 115.377 When may I assign my current account balance and any future income to be deposited into my IIM account directly to a third party?**

The BIA will only honor an assignment of IIM income for health care emergencies made directly to a service provider for prescription drugs, medical equipment or other medical needs as supported by a physician's prescription or a physician's written recommendation.

**§ 115.378 What amount of my IIM income may I assign directly to a third party for health care emergencies?**

You may only assign and the BIA will only recognize an assignment of IIM income in an amount that is not greater than your current account balance plus the total contractual amounts due to be paid into the IIM account within one year from the date of the assignment of income made directly to a third party to pay for a health care emergency as defined in § 115.377. After the assignment of income is presented to the BIA, the assignment of income will no longer be voluntary. No trust account will be overdrawn to make third-party payments.

**§ 115.379 How will an assignment of IIM income made directly to a third party for health care emergencies be paid from my account?**

An assignment of income made directly to a third party in accordance with § 115.337 must be presented to the BIA for payment. The BIA will honor the direct assignment by authorizing an involuntary hold on your current and future account balance up to the amount you assigned for payment. Payments to third parties will be made in accordance with a payment plan. No account will be overdrawn to make third-party payments.

**§ 115.380 May I assign future IIM income as security for a debt?**

Yes, you may make an assignment of IIM income as security for a debt. However, unless the debt is secured under the authority of the Indian Finance Act, the creditor must perfect the security interest by obtaining an order from a court of competent jurisdiction specifying the amount of the debt to be secured by your assignment of IIM income prior to presenting the court order to the BIA for payment. We will not pre-approve or be a signatory party to any account holder's assignment of IIM income as security unless the debt being secured is secured under the authority of the Indian Finance Act. If the debt is secured under

the Indian Finance Act, the BIA will be a signatory party to the account holder's assignment of IIM income as security and the creditor.

**§ 115.381 What must a third party do to acquire a right to receive disbursements from my IIM account?**

(a) Before the BIA will consider placing an involuntary encumbrance on an IIM account, a third party must:

(1) Perfect an assignment of IIM income as security in a court of competent jurisdiction by obtaining an order/judgment stating the amount to be paid under the assignment unless the debt being secured is a debt secured under the authority of the Indian Finance Act;

(2) Perfect with the BIA an assignment of IIM income as security for a debt that was secured under the authority of the Indian Finance Act to determine the amount to be paid under the assignment. To perfect this interest, the third party must present to the BIA the original loan documentation, payment history, date of default, proposed payment schedule, and proof of assignment;

(3) Obtain an order or judgment from a court of competent jurisdiction for child support; or

(4) Present an assignment of income made by an account holder for a health care emergency as defined by § 115.377.

(b) Once a court of competent jurisdiction has issued an order for third party claims under paragraphs (a)(1) and (a)(3) stating the amount owed or the amount to be paid to the creditor or awardee, the creditor or awardee must present the order to the BIA.

**§ 115.382 If the court order specifies that my account be encumbered immediately, will the Secretary honor the court order before my time for a hearing has expired?**

No. A hold will not be placed on your account until five days after the date on which BIA mailed your notice or after five days after the final publication of your public notice.

**§ 115.383 If I assign my income to a third party for health care emergencies or make an assignment of income as security for a secured loan under the Indian Finance Act, will my account be encumbered immediately?**

No. A hold will not be placed on your account until five days after the date on which BIA mailed your notice or after five days after the final publication of your public notice.

**§ 115.384 If I have an involuntary encumbrance on my account, may I make withdrawals from my account?**

If the encumbrance(s) on your IIM account are less than your current

account balance, you may withdraw the difference between the amount owed or obligated and the remaining balance.

**§ 115.385 When will BIA place an involuntary encumbrance on my IIM account?**

(a) The BIA may place an involuntary encumbrance on your IIM account for a specific amount of money to pay:

(1) A child support order from a court of competent jurisdiction;

(2) A debt owed to the United States;

(3) A debt secured under the authority of the Indian Finance Act where the account holder assigned his or her IIM income as security for the loan and the lender has presented the BIA with the loan documents, payment history, date of default, and schedule of payments;

(4) A debt or claim where an account holder assigned his or her IIM income as security for a transaction and there is an order from a court of competent jurisdiction stating the amount of the debt to be paid from the account holder's IIM account;

(5) An assignment of income for a health care emergency made by an account holder to a service provider under §§ 115.377 and 115.378; and

(6) Debt(s) ordered to be paid under a probate order.

(b) Before an IIM account is involuntarily encumbered by the BIA, the BIA will decide whether and what amount of the court ordered debt, child support award, or assignment of income will be paid from the account and develop a schedule for third-party payment.

(c) The BIA will not authorize payment to third parties under an involuntary hold until the account holder has been given an opportunity for a hearing. See subpart F of this part.

**§ 115.386 How does the BIA determine the amount of an involuntary encumbrance?**

The BIA will review all claims against an IIM account and will only recognize those listed in § 115.385. The BIA will determine the amount of money to be paid to a third party and the payment schedule based on the claim against your IIM account, the resources available to you, and the amount of funds in your account. The BIA will also consider your basic welfare needs such as food, clothing, and shelter in making its determination.

**§ 115.387 When will the BIA remove an involuntary encumbrance?**

(a) The BIA will authorize the removal of an involuntary encumbrance under the following circumstances:

(1) If the BIA decides during the hearing process that the debt or

obligation should not be paid from your IIM account; or

(2) Upon satisfaction of your debt or obligation.

(b) The BIA will notify the account holder that it has authorized the removal of the involuntary encumbrance.

**§ 115.388 If my account is supervised or involuntarily encumbered, when will the BIA develop a payment schedule?**

(a) If your account is supervised, the BIA will develop an annual distribution plan in consultation with you and/or your guardian.

(b) If your account is involuntarily encumbered a distribution plan will be developed by the BIA prior to making any third party payments from your account. However, this plan may be modified based upon future claims against your account.

**§ 115.389 Will the payment schedule developed to pay a debt or other obligation expire?**

Yes. The payment schedule should state the time period in which third-party payments are to be made from your account. However, if a payment schedule does not specify a final payment date, the payment schedule will expire when the obligation or debt is paid in full or in five (5) years from the initial date of the restriction. However, there will be no expiration date for a payment schedule to fulfill a child support award other than the time period specified in the court order.

**§ 115.390 If I have multiple encumbrances on my trust account, will there be a priority of payment for those encumbrances?**

(a) Yes, the encumbrances will be paid with the following priority:

(1) A child support order from a court of competent jurisdiction;

(2) A debt to the United States;

(3) Assignment of income as security for a secured debt under the Indian Finance Act;

(4) A federal court order;

(5) A tribal court order;

(6) Assignment for a health care emergency made in accordance with § 115.377.

(b) Where there is more than one encumbrance in one of the preceding categories, the encumbrance will be paid in the order received (*i.e.*, first in time).

(c) Whenever a new encumbrance is placed on an account, the BIA will review all payment schedules and revise as necessary.

**Subpart E—Special Deposit Accounts****§ 115.400 Who receives the interest earned on a special deposit account?**

Generally, interest follows principal. The tribal or individual account holder who owns the money will receive the interest earned in a special deposit account. The amount of interest paid will be directly proportional to the amount of principal owned by the account holder.

**§ 115.401 When will the money in a special deposit account be credited or paid out to the owner of the funds?**

The OTFM will disburse the money from a special deposit account as soon as the BIA certifies the ownership of the funds.

**§ 115.402 May administrative or land conveyance fees paid as federal reimbursements be deposited in a special deposit account?**

No. Administrative or land conveyance fees that are paid to reimburse the federal government for services provided will be retained by the BIA to cover the cost of such services.

**§ 115.403 May cash bonds (e.g., performance bonds, bid deposits, appeal bonds, etc.) be deposited into a special deposit account?**

No. All cash bonds held by the Secretary will be deposited in non-interest bearing accounts until the term of the bonds expire.

**§ 115.404 May the BIA deposit into a special deposit account money that is paid prior to approval of a conveyance or contract instrument for land sales, right-of-ways, resource sales, grazing, or leasing, etc.?**

No. All payments made prior to the BIA's approval of a transaction will be deposited by the BIA into a non-interest bearing, non-trust account. Once the transaction is approved by the BIA, the funds will be deposited into a trust fund account.

**Subpart F—Hearing Process for Restricting an IIM Account****§ 115.500 Under what circumstances may the BIA restrict my IIM account through supervision or an involuntary encumbrance?**

(a) Your IIM account may be restricted through an involuntary encumbrance if:

(1) The BIA receives an order or judgment from a court of competent jurisdiction:

(i) Perfecting an assignment of IIM income as security; or

(ii) Awarding child support from your IIM account; or

(2) The BIA is presented with your signed direct assignment of IIM income for a health care emergency as defined by § 115.377.

(3) The BIA is presented with your assignment of IIM income as security for a debt that is secured under the authority of the Indian Finance Act.

(b) Your IIM account may be restricted through supervision if the BIA receives an order from a court of competent jurisdiction that you are non-compos mentis or an adult in need of financial management assistance.

(c) Your IIM account may be restricted through an involuntary encumbrance if an administrative error caused a deposit or disbursement to be made to you, your IIM account, or to a third party on your behalf.

**§ 115.501 Will I be notified if the BIA decides to place an involuntary encumbrance on or supervise my account?**

If the BIA decides to place an involuntary encumbrance on or supervise your IIM account, the BIA will notify you and provide you with an opportunity to challenge the decision.

**§ 115.502 How will the BIA notify me of its decision to place a hold on my account?**

The BIA will notify you of its decision by:

(a) Certified mail to your address;  
(b) Personal delivery to you or your address;

(c) Publication in your tribal newspaper if your whereabouts are unknown and in the local newspaper serving your last known mailing address; or

(d) First class mail to you in care of the warden, if you are incarcerated. The BIA may send a copy of the notification to your attorney if known.

**§ 115.503 What happens if the notice by certified mail is returned to the BIA marked undeliverable?**

If the notice by certified mail is returned to the BIA marked undeliverable, the BIA will remove the restriction, which was placed on your account five days after the notice was mailed, and will publish a notice in accordance with § 115.502(c).

**§ 115.504 When will the BIA restrict my IIM account once it has decided to involuntarily encumber or supervise my account?**

The BIA will place a restriction on your account:

(a) 5 days after the BIA mails you a notice of its decision to restrict your account;

(b) 1 day after personal delivery to you or your address of BIA's notice of its decision to restrict your account; or

(c) 5 days after the final publication of your public notice of BIA's decision to restrict your account.

**§ 115.505 What information will the BIA include in its notice?**

(a) A letter providing notice of the BIA's decision to restrict your account must contain:

(1) The name on the account;

(2) The amount and reason for the restriction;

(3) An explanation that your IIM account will be restricted 5 days after the date on the certified mail receipt on your notice;

(4) Information explaining that you have 40 days from the date on the certified mail receipt on your notice to request a hearing to challenge the restriction;

(5) Information that explains how to request a hearing;

(6) Information that the BIA will conduct the hearing and that you are assured a fair hearing;

(7) A copy of the fair hearing guidelines;

(8) Information that you may contact the BIA to authorize immediate payment from your IIM account to pay the claim;

(9) The address and phone number of the BIA office that provided the notice; and

(10) Other information as may be determined appropriate by the BIA.

(b) Public notice of the BIA's decision to restrict your account must contain:

(1) The name on the account;

(2) The initial publication date;

(3) A statement that the BIA has been presented with a claim against your account;

(4) A statement that the BIA has decided to place a restriction on your account to pay the claim;

(5) A statement that the public notice will be published once a week for four consecutive weeks and that the initial publication date will be the first week of publication;

(6) A statement that the BIA will place a restriction on your account 5 days from the date of the fourth publication of the public notice;

(7) A statement that you have 30 days from the fourth publication date to challenge the BIA's decision to restrict your account; and

(8) An address and telephone number of the BIA office publishing the notice to request further information and instructions on how to request a hearing to challenge the decision.

**§ 115.506 How do I request a hearing to challenge the BIA's decision to restrict my IIM account?**

You must contact the BIA office that provided you notice of the restriction to request a hearing. Your request must:

- (1) Be in writing;
- (b) Specifically request a hearing to challenge the restriction;
- (c) Be postmarked within:
  - (1) 40 days of the date of the certified mail receipt on your notice from the BIA or the date of personal delivery of your letter of notice, or
  - (2) 30 days of the final publication date of the public notice.

**§ 115.507 When will the BIA conduct a hearing to allow me to challenge its decision to restrict my account?**

The BIA will conduct a hearing within 10 working days from its receipt of your written request for a hearing.

**§ 115.508 Will I be allowed to present testimony?**

Yes. You will be provided the opportunity to present testimony during your hearing. You may not challenge the court order or judgment in this proceeding. Your testimony must be confined to why your IIM account should not be restricted.

**§ 115.509 Will I be allowed to present witnesses?**

Yes. You may present witnesses during a hearing. However, you are responsible for any and all expenses incurred with presenting witnesses.

**§ 115.510 Will I be allowed to question opposing witnesses?**

Yes. You may question all opposing witnesses in your hearing and present witnesses to challenge opposing witness testimony.

**§ 115.511 May I be represented by an attorney at my hearing?**

Yes. You may, at your own expense, have an attorney or other person represent you at your hearing.

**§ 115.512 Will the BIA record the hearing?**

Yes. The BIA will record the hearing.

**§ 115.513 Why is the hearing recorded?**

The hearing record must be made available for review if the hearing process is appealed under § 115.600. The record must be preserved in accordance with Subpart H of this part.

**§ 115.514 How long after the hearing will the BIA make its final decision?**

The BIA will provide a final written decision to all parties within 10 working days of the hearing.

**§ 115.515 What happens if the BIA decides to supervise my account after my hearing?**

BIA social services staff will consult with you and/or your guardian to develop an annual distribution plan. Upon approval by the BIA, the distribution plan will be valid for one year.

**§ 115.516 What happens if the BIA or OST decides to restrict my account because of an administrative error which resulted in funds that I do not own being paid to me or a third party on my behalf?**

The DOI will consult with the account holder to develop a repayment plan.

**§ 115.517 If the BIA decides that the restriction on my account will be continued after my hearing, do I have the right to appeal that decision?**

Yes, you have the right to appeal the BIA's decision under § 115.600.

**§ 115.518 If I decide to appeal the BIA's decision made after my hearing, will BIA restrict my account during the appeal?**

Yes. Your account will be restricted up to the amount at issue in the appeal. No third-party payments will be made until your appeal is decided.

**Subpart G—Appeals****§ 115.600 Do I have a right to appeal any decision made under this part?**

Appeals from an action taken by the BIA may be taken pursuant to 25 CFR part 2, subject to the terms of subpart F in this part.

**Subpart H—Records****§ 115.700 Who owns the records associated with this part?**

Any records generated in fulfillment of this part are the property of the United States.

**§ 115.701 What are a tribe's obligations regarding trust fund records?**

(a) A tribe must make and preserve all financial records that track the source and use of all trust fund expenditures under an approved budget.

(b) Tribal records documenting expenditures of trust funds under an approved budget are considered to be federal records that are subject to the Federal Records Act, 44 U.S.C. Chapter 31 *et seq.*

**§ 115.702 How long must a tribe keep its records?**

A tribe must preserve its records documenting expenditures of trust funds for the period of time authorized by the Archivist of the United States for similar Department of the Interior records in accordance with 44 U.S.C. Chapter 33. The records, and related records management practices and

safeguards required under the Federal Records Act, are subject to inspection by the Secretary and the National Archives and Records Administration.

**Subpart I—Exceptions****§ 115.801 Funds of deceased Indians of the Five Civilized Tribes.**

Funds of a deceased Indian of the Five Civilized Tribes may be disbursed to pay *ad valorem* and personal property taxes, Federal and State estate and income taxes, obligations approved by the Secretary or his authorized representative prior to the death of the decedent, expenses of last sickness and burial, and claims found to be just and reasonable which are not barred by the statute of limitations, costs of determining heirs to restricted property by the State courts, and claims allowed pursuant to part 16 of this chapter.

**§ 115.802 Assets of members of the Agua Caliente Band of Mission Indians.**

(a) The provisions of this section apply to money or other property, except real property, held by the United States in trust for such Indians, which may be used, advanced, expended, exchanged, deposited, disposed of, invested, and reinvested by the Director, Palm Springs Office, in accordance with the Act of October 17, 1968 (Pub. L. 90-597). The management or disposition of real property is covered in other parts of this chapter.

(b) Investments made by the Director, Palm Springs Office, under the Act of October 17, 1968, supra, shall be of such a nature as will afford reasonable protection of the assets of the individual Indian involved. The Director is authorized to enter into contracts for the management of the assets (except real property) of individual Indians. The consent of the individual Indian concerned must be obtained prior to the taking of actions affecting his assets, unless the Director determines, under the provisions of section (e) of the Act, that consent is not required.

(c) The Director may, consistent with normal business practices, establish appropriate fees for reports he requires from guardians, conservators, or other fiduciaries appointed under State law for members of the Band.

**§ 115.803 Osage Agency.**

The provisions of this part do not apply to funds the deposit or expenditure of which is subject to the provisions of part 117 of this chapter.

**PART 162—LEASES AND PERMITS**

4. Part 162 is revised to read as follows:

**Subpart A—Purpose and Definitions**

Sec.

- 162.1 What is the purpose of this part?  
162.2 What key terms do I need to know?

**Subpart B—General Lease Provisions and Requirements**

- 162.3 What leases are covered by this subpart?

**General Provisions**

- 162.4 Do tribal laws apply to leases?  
162.5 How will the Secretary implement tribal laws on Indian agricultural lands?  
162.6 What tribal policies will we apply for leasing on Indian agricultural lands?  
162.7 May individual Indian landowners exempt their land from tribal policies for leasing on Indian agricultural lands?  
162.8 What notifications are required that tribal law applies to a lease on Indian agricultural land?  
162.9 Who enforces tribal laws pertaining to Indian agricultural lands?  
162.10 How is a lease on Indian land obtained?  
162.11 Is an agricultural resource management plan required?  
162.12 How will the Secretary decide whether to grant and/or approve a lease?  
162.13 What supporting documents must a potential lessee provide?  
162.14 Must a lease be recorded?  
162.15 Where are leases recorded?  
162.16 Who is responsible for recording a lease?  
162.17 Can more than one tract of land be combined into one lease?  
162.18 Is there a standard lease form?  
162.19 Will we notify the lessee of any change in land title status?  
162.20 How is leased land described?  
162.21 May a lease be amended, modified, assigned, transferred or sublet?  
162.22 May a lease be used as collateral for a leasehold mortgage?  
162.23 What factors does the BIA consider when reviewing a leasehold mortgage?  
162.24 May a lessee voluntarily assign a leasehold interest under an approved encumbrance?  
162.25 May the holder of a leasehold mortgage assign the leasehold interest after the sale or foreclosure of an approved encumbrance?

**Rent and Terms**

- 162.26 Are there specific provisions that must be included in a lease?  
162.27 How long is a lease term?  
162.28 When may a lessee take possession of leased Indian land?  
162.29 Can improvements be constructed on Indian lands?  
162.30 What happens to improvements constructed on Indian lands when the lease has been terminated?  
162.31 What happens if the improvements are not removed within the specified time period?  
162.32 When must a lease payment be made?  
162.33 When is a lease payment late?  
162.34 Will a lessee be notified when a lease payment is due?

- 162.35 What happens if a lessee does not receive notice that a lease payment is due?  
162.36 What will the BIA do to collect lease payments that are not made in accordance with the terms of a lease?  
162.37 Is there a penalty for late payment on a lease?  
162.38 Does the BIA accept partial payment for a lease payment due?  
162.39 May a lessee make a lease payment in advance of the due date?  
162.40 May an individual Indian landowner modify the terms of the lease on a fractionated tract for advance lease payment?  
162.41 To whom are lease payments made?  
162.42 May a lessee send a lease payment directly to the Indian landowner?  
162.43 What forms of payment are acceptable to the Secretary?  
162.44 When required under a lease, how will the BIA adjust the lease payment?

**Bonds and Insurance**

- 162.45 Must a lessee, assignee or sublessee provide a bond for a lease?  
162.46 How do we determine the amount of the bond?  
162.47 What forms of bonds will the BIA accept?  
162.48 How will a cash bond be administered?  
162.49 Is interest paid on a cash performance bond?  
162.50 Are cash performance bonds refunded?  
162.51 Is insurance required for a lease?  
162.52 What types of insurance may be required?

**Subpart C—Process for Obtaining a Lease**

- 162.60 Who is responsible for leasing Indian land?  
162.61 How do I acquire a lease on Indian land?  
162.62 How do I acquire a lease through negotiation?  
162.63 What are the basic steps for acquiring a lease through negotiation?  
162.64 Must I negotiate with and obtain the consent of all of the Indian landowners of a fractionated tract for a lease other than an agricultural lease?  
162.65 Can I negotiate a contract with an Indian landowner to lease land at a future date?  
162.66 How do I acquire an advertised lease through competitive bidding?  
162.67 Must Indians who own Indian land obtain a lease before using this land for their purposes (owner's use)?  
162.68 Must the parents or guardians of minors who own Indian land obtain a lease before using the land?

**Subpart D—Granting a Lease**

- 162.70 Who may grant a lease?  
162.71 Who may represent an individual Indian landowner in granting a lease?  
162.72 May an emancipated minor grant a lease on his or her own Indian land?  
162.73 When may the Secretary grant permits?  
162.74 What requirements apply to an agricultural lease on fractionated tracts?

- 162.75 When is a decision by the BIA regarding leases effective?

**Subpart E—Business Leases****General Provisions**

- 162.80 What types of leases are covered by this part?  
162.81 How is a business lease obtained?  
162.82 What supporting documents must I provide?

**Rent and Term**

- 162.83 How much rent must a lessee pay?  
162.84 Is a surety bond or guaranty required?  
162.85 Can a lease be renewed?  
162.86 May a lease be terminated prior to its expiration date?

**Consents and Approvals**

- 162.87 How and when can a lease be amended?  
162.88 May a lease be assigned, sublet, or mortgaged without the consent of the Indian landowners?  
162.89 May the Indian landowners withhold their consent to an assignment or encumbrance?  
162.90 May a lease be assigned, sublet, or mortgaged without BIA approval?  
162.91 How will the BIA decide whether to approve an assignment or sublease?

**Subpart F—Compensation to Landowners**

- 162.100 What does the BIA do with rent payments received from lessees?  
162.101 How do Indian landowners receive rent payments?  
162.102 How will the rent be distributed if the lease covers more than one tract of land with different owners?

**Subpart G—Administrative Fees**

- 162.110 Are there administrative fees for a lease?  
162.111 How are administrative fees determined?  
162.112 Are administrative fees refundable?  
162.113 May the Secretary waive administrative fees?  
162.114 Are there any other administrative or tribal fees, taxes or assessments that must be paid?

**Subpart H—Lease Violations**

- 162.120 What lease violations are addressed by this subpart?  
162.121 How will the Secretary enforce compliance with lease provisions?  
162.122 What happens if a violation of a lease occurs?  
162.123 What will a written notice of violation contain?  
162.124 Can a determination of a violation be contested?  
162.125 What happens to a bond if a violation occurs?  
162.126 What happens if you do not cure a lease violation?  
162.127 If you do not cure a lease violation, what may an Indian landowner do?  
162.128 Can the Secretary take emergency action without prior notice if the leased premises are being damaged?  
162.129 What rights does a lessee have if the Secretary takes emergency action under this subpart?

**Subpart I—Appeals**

162.130 May decisions by the Secretary be appealed?

**Subpart J—Non-Trust Interests**

162.140 May the Secretary grant or approve leases for non-trust interests in Indian land?

162.141 Are non-trust interests included in a lease?

162.142 How will a lessee know there is a non-trust interest in Indian land?

162.143 From whom must a lessee lease a non-trust interest?

162.144 Is the non-trust interest shown in a lease of Indian land?

162.145 How much rent is due for the non-trust interest?

162.146 May a lessee payment made by a lessee to the BIA or to an Indian landowner include payment for any non-trust interest?

162.147 Will the BIA grant or approve a lease on a fractionated tract that is subject to a life estate held by the owner of a non-trust interest?

**Subpart K—Valuation**

162.150 Why must the Secretary determine the fair annual rental of Indian land?

162.151 How does the Secretary determine the fair annual rent of Indian land?

162.152 Will the BIA ever grant or approve a lease at less than fair annual rental?

**Subpart L—Trespass**

162.160 What is trespass?

162.161 What is the BIA's trespass policy?

162.162 Who can enforce this subpart?

**Notification**

162.163 How are trespassers notified of a trespass determination?

162.164 What can I do if I receive a trespass notice?

162.165 Who else will the BIA notify?

**Actions**

162.166 What actions does the BIA take against trespassers?

162.167 When will we impound unauthorized livestock or other property?

162.168 How will you be notified if your unauthorized livestock or other property are to be impounded?

162.169 What will we do after we impound unauthorized livestock or other property?

162.170 How do I redeem my impounded livestock or other property?

162.171 How will the sale of impounded livestock or other property be conducted?

**Penalties, Damages, and Costs**

162.172 What are the penalties, damages, and costs payable by trespassers on Indian land?

162.173 How will the BIA determine the value of forage or crops consumed or destroyed?

162.174 How will the BIA determine the value of the product illegally used or removed?

162.175 How will the BIA determine the amount of damages to Indian land?

162.176 How will the BIA determine the costs associated with enforcement of the trespass?

162.177 What happens if I do not pay the assessed penalties, damages and costs?

162.178 How are the proceeds from trespass distributed?

162.179 What happens if the BIA does not collect enough money to satisfy the penalty?

**Subpart M—Records**

162.180 Who owns records associated with this part?

**Subpart N—Special Requirements for Certain Reservations**

162.190 Crow Reservation

162.191 Fort Belknap Reservation

162.192 Cabazon, Augustine and Torres-Martinez Reservations, California

162.193 Colorado River Reservation

162.194 Salt River and San Xavier Reservations

162.195 Tulalip Reservation

**Authority:** 5 U.S.C. 301, R.S. 463 and 465; 25 U.S.C. 2 and 9. Interpret or apply sec. 3, 26 Stat. 795, sec. 1, 28 Stat. 305, secs. 1, 2, 31 Stat. 229, 246, secs. 7, 12, 34 Stat. 545, 34 Stat. 1015, 1034, 35 Stat. 70, 95, 97, sec. 4, 36 Stat. 856, sec. 1, 39 Stat. 128, 41 Stat. 415, as amended, 751, 1232, sec. 17, 43 Stat. 636, 641, 44 Stat. 658, as amended, 894, 1365, as amended, 47 Stat. 1417, sec. 17, 48 Stat. 984, 988, 49 Stat. 115, 1135, sec. 55, 49 Stat. 781, sec. 3, 49 Stat. 1967, 54 Stat. 745, 1057, 60 Stat. 308, secs. 1, 2, 60 Stat. 962, sec. 5, 64 Stat. 46, secs. 1, 2, 4, 5, 6, 64 Stat. 470, 69 Stat. 539, 540, 72 Stat. 968, 107 Stat. 2011, 108 Stat. 4572, March 20, 1996, 110 Stat. 4016; 25 U.S.C. 380, 393, 393a, 394, 395, 397, 402, 402a, 403, 403a, 403b, 403c, 409a, 413, 415, 415a, 415b, 415c, 415d, 477, 635, 3701, 3702, 3703, 3712, 3713, 3714, 3715, 3731, 3733.

**Subpart A—Purpose and Definitions****§ 162.1 What is the purpose of this part?**

(a) The purpose of this part is to describe the authorities, policies, and procedures the Secretary will use to grant, approve, and administer, a surface lease or permit on Indian land or government land. This part does not apply to grazing permits, which are administered under part 166 of this chapter, or Indian forest land, which is administered under part 153 of this chapter.

(b) This part includes a subpart N, which applies to leases and permits on specific reservations. All of the requirements in subparts A through M of this part apply to these reservations unless the provisions contained in subpart N of this part for each specific reservation state otherwise.

**§ 162.2 What key terms do I need to know?**

For purposes of this part:

*Adult* means an individual who is 18 years of age or older.

*Agricultural lease or permit* means a lease or permit for farming and/or grazing purposes on Indian agricultural land.

*Agricultural resource management plan* means a ten year plan developed through the public review process specifying the tribal management goals and objectives developed for tribal agricultural and grazing resources. Plans developed and approved under AIARMA will govern the management and administration of Indian agricultural resources and Indian agricultural lands by the BIA and by Indian tribal governments.

*AIARMA* means American Indian Agricultural Resources Management Act of December 3, 1993 (107 Stat. 2011, 25 U.S.C. 3701 *et seq.*), as amended on November 2, 1994, (108 Stat. 4572).

*Appeal bond* means a type of bond that guarantees payment of an amount that may be owed after the completion of an appeal process.

*Approving/approval* means the action taken by the BIA to approve a lease.

*Assign* means to transfer the contract rights in a lease or permit for use of Indian land to an individual, company, corporation or partnership in exchange for compensation or other consideration. The party receiving the assignment (assignee) assumes all of the rights and obligations of the lease.

*Assignee* means the person to whom the contract rights for use of Indian land were assigned.

*BIA* means Bureau of Indian Affairs within the Department of the Interior.

*Bond* means an agreement in writing in which a surety, or an obligor for a personal bond, guarantees performance or compliance with the lease terms.

*Crop share* means the agreed upon percentage of an agricultural crop taken in kind as payment of rent under a lease.

*Encumbrance* means a mortgage, deed of trust or other instrument which secures a debt owed by a lessee to a lender or other encumbrancer.

*Environmental baseline survey* means an investigation that results in a qualitative and quantitative statement of the nature and magnitude of environmental contamination physically present on a defined tract of real property.

*Fair annual rental* means a reasonable annual return on fair market value, as this value may be determined by appraisal, advertisement, competitive bidding, negotiation, or any other appropriate method in accordance with the Uniform Standards of Professional Appraisal Practices (USPAP).

*Fractionated tract* means a parcel of Indian land with more than one owner.

*Government land* means the surface estate of a tract of land, or any interest therein, which is acquired or reserved by the United States for the Bureau of Indian Affairs administrative purposes. Indian land is not government land.

*Grant/granting* means the process of agreeing or consenting to a lease.

*I/You* means the person to whom this part directly applies.

*In loco parentis* means the person whom the BIA recognizes as standing in place of a parent.

*Indian agricultural land* means Indian land, including farmland and rangeland, excluding Indian forest land (except where authorized grazing occurs) that is used for production of agricultural products, and Indian lands occupied by industries that support the agricultural community, regardless of whether a formal inspection and land classification has been conducted.

*Indian land* means:

(1) The surface (non-mineral) estate of a tract of land, or any interest therein, which is held by the United States in trust for a tribe or an individual Indian; or

(2) A tract of land, or any interest therein, which is owned by a tribe or an individual Indian, subject to federal restrictions against alienation or encumbrance.

*Indian landowner* means an Indian tribe or individual Indian who owns an interest in Indian land.

*Individually owned Indian land* means Indian land or an interest therein owned by an individual.

*Lease* means a contract which grants the right to possess or use Indian land for a specified purpose and duration in exchange for compensation or other consideration.

*Leasehold* means the interest in real property held by a lessee.

*Lessee* means an individual, company, corporation, or partnership who has entered into a lease on tribal and/or Indian lands in exchange for compensation.

*Life estate* means an interest in Indian land that expires upon the death of the interest holder, as administered under part 179 of this chapter.

*Majority interest* means the total amount of tribal and/or Indian land interest that is more than 50 percent of the entire ownership in the land.

*Negotiable Treasury securities* means securities issued by the Treasury Department of the United States.

*NEPA* means the National Environmental Policy Act (42 U.S.C. 4321, *et seq.*)

*Non compos mentis* means a person who has been legally determined not capable of handling his/her own affairs.

*Non-trust interest* means an undivided interest in Indian land that is owned in fee simple, rather than in trust or restricted status.

*Permit* means a privilege, revocable at will in the discretion of the Secretary and not assignable, to enter on and use a specified tract of land for a specified purpose.

*Restricted land* means land for which a tribe or individual Indian holds fee simple title subject to limitations or restrictions against alienation or encumbrance as set forth in the title and/or by operation of law.

*Secretary* means the Secretary of the Interior or an authorized representative; it also means a tribe or tribal organization if that entity is administering specific programs, functions services or activities, previously administered by the Secretary, but now authorized under a Self-Determination Act contract (pursuant to 25 U.S.C. 450f) or a Self-Governance compact (pursuant to 25 U.S.C. 558cc). Such authority does not include inherently federal functions.

*Surety* means one who guarantees the performance, default or debt of another.

*Sublease* means a lease granted by a lessee of the property.

*Trespass* means an unauthorized occupancy, use of, or action on Indian agricultural lands.

*Tribal land* means land for which the United States holds fee title in trust for the benefit of a tribe, and includes assignments of tribal land.

*Tribal law* means the body of non-federal law that governs tribal lands and activities, and includes ordinances or other enactments by a tribe, tribal constitutions, tribal court rulings, and tribal common law.

*Trust land* means land, or an interest therein, for which the United States holds fee title in trust for the benefit of a tribe or an individual Indian.

*Undivided interest* means that the interest of co-owners is in the entire property and that each such interest is indistinguishable from every other interest: The interest has not been divided out from the whole parcel. (Example: If you own 1/4 interest in 160 acres, you do not own an identifiable 40 acre tract. You own 1/4 of the whole 160 acres because your 1/4 interest has not been divided out from the whole 160 acres.)

*Us/We/Our* means the Secretary, as defined in this part.

*Uniform Standards of Professional Appraisal Practice (USPAP)* means the standards promulgated by the Appraisal Standards Board of The Appraisal Foundation which establish requirements and procedures for

professional real property appraisal practice.

## Subpart B—General Lease Provisions and Requirements

### § 162.3 What leases are covered by this subpart?

This subpart applies to all leases under this part unless otherwise specified, such as business leases.

### General Provisions

#### § 162.4 Do tribal laws apply to leases?

Tribal laws will apply to leases of Indian land under the jurisdiction of the tribe enacting such laws, unless those tribal laws are inconsistent with applicable federal law.

#### § 162.5 How will the Secretary implement tribal laws on Indian agricultural lands?

Unless prohibited by federal law, the Secretary will comply with laws or ordinances adopted by the tribal government to regulate land use or other activities under tribal jurisdiction and with tribal laws and ordinances pertaining to Indian agricultural lands, including laws regulating the environment and historic or cultural preservation.

#### § 162.6 What tribal policies will we apply for leasing on Indian agricultural lands?

(a) When specifically authorized by an appropriate tribal resolution establishing a general policy for leasing of Indian agricultural lands, the Secretary will:

(1) Provide a preference to Indian lessees in issuing or renewing a lease, so long as the Indian landowner receives fair annual rental;

(2) Waive or modify the requirement that a lessee must post a surety or performance bond;

(3) Provide for posting of other collateral or security in lieu of a bond; and

(4) Approve leases on tribal lands at rates determined by the tribal governing body.

(b) When specifically authorized by an appropriate tribal resolution establishing a general policy for leasing of Indian agricultural lands, and subject to paragraph (c) of this section, the Secretary may:

(1) Waive or modify any general notice requirement of federal law; and

(2) Grant or approve a lease on “highly fractionated undivided heirship lands” as defined by tribal law.

(c) The Secretary may take the action specified in paragraph (b) of this section only if:

(1) The tribe defines by resolution what constitutes “highly fractionated undivided heirship lands;”

(2) The tribe adopts a plan for notifying Indian landowners in place of any notice requirements of federal law; and

(3) The Secretary's action is necessary to prevent waste, reduce idle land acreage and ensure income.

**§ 162.7 May individual Indian landowners exempt their land from tribal policies for leasing on Indian agricultural lands?**

(a) The individual Indian landowner(s) of a tract of land or an undivided interest may exempt their Indian agricultural land from our application of a tribal leasing policy referred to in § 162.6 if:

(1) The Indian landowner(s) have at least 50% interest in such tract; and

(2) The Indian landowner(s) submit a written objection to us.

(b) The same procedure applies to withdrawing a request for exemption.

(c) Upon verification of the written objection we will notify the tribe of the landowners' exemption from the specific tribal policy. If the individual Indian landowner withdraws a request for exemption, we will notify the tribe of the withdrawal.

**§ 162.8 What notifications are required that tribal law applies to a lease on Indian agricultural land?**

(a) Tribes must notify us of the content and effective dates of new tribal laws that supercede these regulations.

(b) We will then notify any persons or entities undertaking activities on Indian lands of the superseding effect of the tribal law. We will provide:

(1) Individual written notice to each affected lessee; or

(2) Public notice posted at the tribal community building and at the United States Post Office, and published in the local newspaper nearest to the Indian lands where activities are occurring.

**§ 162.9 Who enforces tribal laws pertaining to Indian agricultural land?**

(a) The tribe is responsible for enforcing tribal laws and ordinances pertaining to Indian agricultural lands.

(b) The Secretary will:

(1) Provide assistance in the enforcement of tribal laws; and

(2) Require appropriate federal officials to appear in tribal forums when requested by a tribe.

**§ 162.10 How is a lease on Indian land obtained?**

A lease on Indian lands is granted by the Indian landowner and approved by us. However, there are exceptions to this general rule, as discussed in 25 U.S.C. 415 and subpart D of this part.

**§ 162.11 Is an agricultural resource management plan required?**

An agricultural resource management plan must be developed either by the tribe or by us in consultation with the affected tribe(s). This plan should be consistent with the tribe's integrated resource management plan. The agricultural resource management plan must:

(a) Determine available agricultural resources;

(b) Identify specific tribal agricultural resource goals and objectives;

(c) Establish management objectives for the resources;

(d) Define critical values of the Indian tribe and its members and identify holistic management objectives;

(e) Identify actions to be taken to reach established objectives;

(f) Be developed through public meetings;

(g) Use the public meeting records, existing survey documents, reports, and other research from federal agencies, tribal community colleges, and land grant universities; and

(h) Be completed within three years of the initiation of activity to establish the plan.

**§ 162.12 How will the Secretary decide whether to grant and/or approve a lease?**

(a) Before we grant or approve a lease, we must determine in writing that a lease is in the best interest of the Indian landowner by:

(1) Reviewing the lease and supporting documents;

(2) Identifying potential environmental impacts and ensuring compliance with all applicable environmental laws, land use laws, and ordinances (including preparation of the appropriate review under the National Environmental Policy Act (NEPA) (42 U.S.C. 4321, et seq.);

(3) Recommending lease modifications or mitigation measures that are needed to satisfy any preliminary federal and tribal land use requirements; and

(4) After the parties agree to make the recommended modifications, making specific written findings that our grant or approval will further the best interests of the Indian landowners.

(b) In making the findings required by this section, we must specifically consider:

(1) The relationship between the use of the leased lands and use of neighboring lands;

(2) The height, quality, and safety of any structures or other facilities to be constructed on such lands;

(3) The availability of police and fire protection, utilities, and other essential community services;

(4) The availability of judicial forums for all criminal and civil matters arising on the leased lands;

(5) The effect on the environment of the uses to which the leased lands will be subject; and (6) The tribe's assessment of the potential impacts of the proposed use on the preservation of the Indian community, the continued practice of Indian cultural activities, and the exercise of tribal government authority on the leased lands and on other nearby land of that tribe.

(c) We will not grant or approve a lease more than 12 months before its beginning date.

**§ 162.13 What supporting documents must a potential lessee provide?**

(a) If the potential lessee is a corporation, limited liability company, partnership, joint venture, or other legal entity, it must provide organizational documents, certificates, filing records, financial statements, and resolutions or other authorization documents, as needed to show that the lease will be enforceable against the lessee and the lessee will be able to perform all of its lease obligations.

(b) If the lease authorizes new construction, the potential lessee must provide environmental reports, which may include an environmental baseline survey, archaeological reports, and other planning documents as we may determine are necessary to facilitate our compliance with NEPA and other federal and tribal environmental and land use requirements.

**§ 162.14 Must a lease be recorded?**

All leases on Indian land in excess of one year must be recorded.

**§ 162.15 Where are leases recorded?**

Leases are recorded in the appropriate BIA Land Titles and Records Office.

**§ 162.16 Who is responsible for recording a lease?**

We are responsible for ensuring that all leases that we approve or grant are recorded in the Land Titles and Records Office. Tribes are responsible for recording leases that do not require our approval.

**§ 162.17 Can more than one tract of land be combined into one lease?**

Yes. A lease may include more than one tract of land. The tracts may be owned by a tribe, individual(s), or a combination of tribe and individual(s). Leases may include tribal, individual, or government lands, or any combination thereof.

**§ 162.18 Is there a standard lease form?**

In order to accommodate the variety of leases that may be let on Indian land,

there is no standard lease form. However, the provisions of the lease must conform to the requirements of this part.

**§ 162.19 Will we notify the lessee of any change in land title status?**

Yes. We will notify the lessee if a fee patent is issued or if restrictions are removed, but the lease continues in effect for its term. After we notify the lessee, our obligation under § 162.8 and this section ceases.

**§ 162.20 How is leased land described?**

The land should be described by aliquot parts. However, if the land cannot be described by aliquot parts, a current certified plat by a registered surveyor or other acceptable description of the land being leased must be provided.

**§ 162.21 May a lease be amended, modified, assigned, transferred or sublet?**

(a) We must approve an amendment, modification, assignment, transfer or sublease with the written consent of all parties to the lease and the sureties in accordance with paragraphs (b) through (d) of this section.

(b) An Indian landowner may designate in writing one or more co-owners or other representatives to negotiate and/or agree to amendments on the landowner's behalf.

(1) The designated landowner or representative may:

(i) Negotiate or agree to amendments; and

(ii) Consent to or approve other items as necessary.

(2) The designated landowner or representative may not:

(i) Negotiate or agree to amendments that reduce the rentals payable to the other landowners; or

(ii) Terminate or modify the term of the lease.

(c) We may approve a lease for tribal land to individual members of a tribe or to tribal housing authorities which contains a provision permitting the assignment of the lease by the lessee or the lender without our approval when a lending institution or an agency of the United States:

(1) Makes, insures or guarantees a loan for the construction of housing for Indians on the leased premises;

(2) Accepts the leasehold as security for the loan; or

(3) Obtains the leasehold through foreclosure or otherwise.

(d) We may approve a lease containing a provision which authorizes the lessee to sublease the premises in whole or in part without further approval.

(e) Subleases made under this provision do not relieve the sublessor (lessee of record) from any liability under the lease, nor will it diminish our authority to take any action authorized under this subpart to protect the trust asset.

**§ 162.22 May a lease be used as collateral for a leasehold mortgage?**

Yes. We may approve a lease containing a provision that authorizes the lessee to encumber the leasehold interest for the development, improvement or refinancing of the leased premises. We must approve the leasehold mortgage before it can be effective. We will record the approved leasehold mortgage instrument.

**§ 162.23 What factors does the BIA consider when reviewing a leasehold mortgage?**

(a) We will approve the leasehold mortgage if:

(1) All consents required in the lease have been obtained from the Indian landowner and any surety or guarantor;

(2) The mortgage covers only the interest in the leased premises, and no unrelated collateral belonging to the lessee;

(3) The financing being obtained will be used only in connection with the development or use of the leased premises, and the mortgage does not secure any unrelated obligations owed by the lessee to the mortgagee; and

(4) We find no compelling reason to withhold our approval in order to protect the best interests of the Indian landowner.

(b) In making the finding required by paragraph (a)(4) of this section, we will consider whether:

(1) The ability to perform the lease obligations would be adversely affected by the cumulative mortgage obligations;

(2) Any negotiated lease provisions as to the allocation or control of insurance or condemnation proceeds would be modified;

(3) The remedies available to us or to the Indian landowners would be limited (beyond the additional notice and cure rights to be afforded to the mortgagee), if the lessee defaults on the lease; and

(4) Any rights of the Indian landowners would be subordinated or adversely affected in the event of a foreclosure, assignment in lieu of foreclosure, or issuance of a "new lease" to the mortgagee.

(c) We will notify the Indian landowners of our approval of the leasehold mortgage.

**§ 162.24 May a lessee voluntarily assign a leasehold interest under an approved encumbrance?**

Yes. With our approval, under an approved encumbrance a lessee voluntarily may assign the leasehold interest to someone other than the holder of a leasehold mortgage if the assignee agrees in writing to be bound by the terms of the lease. A lease may provide the Indian landowner with a right of first refusal on the conveyance of the leasehold interest.

**§ 162.25 May the holder of a leasehold mortgage assign the leasehold interest after the sale or foreclosure of an approved encumbrance?**

Yes. The holder of a leasehold mortgage may assign a leasehold interest obtained by the sale or foreclosure of an approved encumbrance without our approval if the assignee agrees in writing to be bound by the terms of the lease. A lease may provide the Indian landowner with a right of first refusal on the conveyance of the leasehold interest.

**Rent and Terms**

**§ 162.26 Are there specific provisions that must be included in a lease?**

Yes. In addition to other provisions identified in this part, all leases must provide at a minimum for the following:

(a) The lessee and sureties maintain an obligation to the United States and the Indian landowners;

(b) The lease will not delay or prevent the issuance of a fee patent.

(c) Except for agricultural leases, there must not be a preference right to future leases;

(d) There must not be any unlawful conduct, creation of a nuisance, illegal activity, negligent use or waste of property;

(e) Farming and grazing operations must be conducted in accordance with the principles of sustained yield management, integrated resource management planning, sound conservation practices, and other community goals as expressed in tribal laws;

(f) Lessees must comply with all applicable laws, ordinances, rules, regulations, and other legal requirements. If a lessee does not comply with the lease provisions and requirements, the lease is considered to be in violation (see subparts H and I of this part for violation, cancellation, and remedies available);

(g) A citation of the authority used to grant and the delegation of authority for the approval of the lease;

(h) A statement indicating that any rental payments of a fixed amount will be adjusted under section 162.48, including:

- (1) When the adjustments will be made;
- (2) Who will make the adjustments;
- (3) How the adjustment will be determined; and
- (4) How any disputes arising from the adjustments will be settled;

(i) A legal description or current certified plat of the lands being leased, or other acceptable description of the land being leased; and

(j) The lessee will indemnify the United States and the Indian landowner against all liabilities or costs relating to the use, handling, treatment, removal, storage, transportation, or disposal of hazardous materials or the release or discharge of any hazardous material from the lease premises that occur during the lease term, regardless of fault.

**§ 162.27 How long is a lease term?**

(a) The lease term (including any renewal period permitted under § 162.16(g) of this subpart), must be reasonable, given the purpose of the lease and the type of financing and level of investment required. A longer term may be permitted, if it is necessary to ensure that the land value is preserved and that the land is utilized to the maximum benefit of the Indian owners.

(b) Unless otherwise authorized by federal statute (such as 25 U.S.C. 415(a) or 4211(b)), leases for public, religious, educational, recreational, residential or business purposes will have a maximum primary term that does not exceed 25 years and may include an option to extend for one additional term that may not exceed 25 years.

(c) Leases for housing development and residential purposes can not exceed 50 years including renewals, unless a federal statute (such as 25 U.S.C. 415(a)) has authorized a longer period for leases of land within certain reservations.

(d) Leases for agricultural purposes will not usually exceed five years for dry-farming land or ten years for irrigable lands. If substantial investment in the development or production of a specialized crop is required, agricultural leases may be made for up to 25 years. To determine if a term longer than ten years is justified, we will consider the feasibility of the proposed development, crop production, or consideration of the amount of investment required by the lessee or other relevant factors;

(e) For the undetermined heirs of an individual Indian decedent owning 100 percent (%) interest in the land, we will grant leases for a maximum term of two years.

(f) A lease can be extended only by renewal or extension as defined in the

lease. Leases may provide multiple options for termination; and

(g) A lease will specify the beginning and ending dates of the term allowed, as well as any option to renew, extend, or terminate.

**§ 162.28 When may a lessee take possession of leased Indian land?**

The lessee may take possession of leased Indian land on the date specified in the lease as the beginning date of the term, but not before we approve the lease.

**§ 162.29 Can improvements be constructed on Indian lands?**

Improvements may be constructed if the lease contains a provision allowing them.

**§ 162.30 What happens to improvements constructed on Indian lands when the lease has been terminated?**

If improvements are to be constructed on the land, the lease must contain a provision that improvements will either:

(a) Remain on the lands upon termination of the lease, in a condition that is in compliance with applicable building, health and other codes, and will become the property of the Indian landowner; or

(b) Be removed within a time period specified in the lease. The lands must be restored as close as possible to the original condition prior to construction of such improvements. At the request of the lessee we may, at our discretion, grant an extension of time for the removal of improvements for circumstances beyond the control of the lessee.

**§ 162.31 What happens if the improvements are not removed within the specified time period?**

If a lessee fails to remove the improvements within the time allowed in the lease, the lessee may forfeit the right to remove the improvements and the improvements may become the property of the Indian landowner.

**§ 162.32 When must a lease payment be made?**

A lease payment is due by the date specified in the lease. The BIA will not accept a lease payment beyond the lease term, except in collection of unpaid lease payments.

**§ 162.33 When is a lease payment late?**

A lease payment is deemed to be late if it is not received within 15 days of the payment date specified in the lease.

**§ 162.34 Will a lessee be notified when a lease payment is due?**

Each lessee will receive written notice stating when lease payments are due.

Additionally, each lease informs the lessee of the schedule of payments agreed to by the parties.

**§ 162.35 What happens if a lessee does not receive notice that a lease payment is due?**

If a lessee does not receive notice that a lease payment is due, the lessee remains responsible for making timely payment of all amounts due under the lease.

**§ 162.36 What will the BIA do to collect lease payments that are not made in accordance with the terms of a lease?**

Failure to make payments in accordance with the terms of a lease will be enforced against the lessee as a lease violation under subpart H of this part.

**§ 162.37 Is there a penalty for late payment on a lease?**

Yes. A lease will contain a provision that specifies the penalty that will be assessed and collected for late payment.

**§ 162.38 Does the BIA accept partial payment for a lease payment due?**

Yes, in special circumstances. Ordinarily, the total amount is due and payable by the payment date specified in the lease, and failure to make complete payment may constitute a violation of the lease. Exceptions are rarely granted and require a specific written request and the consent of the parties to the lease and our approval. For example, partial payment may be allowed for the bankruptcy of a lessee.

**§ 162.39 May a lessee make a lease payment in advance of the due date?**

Rent may be paid only 30 days in advance of the due date as specified in the lease. The BIA will not accept a lease payment more than 30 days prior to the beginning of the new lease term.

**§ 162.40 May an individual Indian landowner modify the terms of the lease on a fractionated tract for advance lease payment?**

No. An individual Indian landowner of a fractionated tract may not modify a lease to permit a lease payment in advance of the due date specified in the lease.

**§ 162.41 To whom are lease payments made?**

All lease payments must be submitted as provided in the lease. The lessee must make payments payable to the party identified in the lease in the amount due, including any late payment, penalties, interest, or other amount if applicable.

**§ 162.42 May a lessee send a lease payment directly to the Indian landowner?**

Yes, if the lease provides for direct payment.

**§ 162.43 What forms of payment are acceptable to the Secretary?**

Payment must be in accordance with the lease. Payments of money must be United States currency in one of the following forms:

- (a) Postal money order;
- (b) Bank money order;
- (c) Cashier's check;
- (d) Certified check; or
- (e) Electronic funds transfer.

**§ 162.44 When required under a lease, how will the BIA adjust the lease payment?**

(a) We will adjust the lease payment every fifth year.

(b) We will make our adjustments by appropriate valuation method, taking into account the value of any improvements made under the lease, unless the lease provides otherwise. These adjustments will be retroactive, if they are not made at the time specified in the lease.

(c) For leases granted by tribes, we will consult with the granting tribe to determine whether an adjustment of the lease payment should be made. The lease must be modified to document the granting tribe's waiver of the adjustment.

**Bonds and Insurance****§ 162.45 Must a lessee, assignee or sublessee provide a bond for a lease?**

Yes. A lessee, assignee or sublessee must provide a bond for each lease interest acquired. Upon request by an Indian landowner, we may waive the bond requirement.

**§ 162.46 How do we determine the amount of the bond?**

(a) We will determine the amount of the bond for each lease based on the following considerations, as appropriate:

- (1) The value of one year's rental;
- (2) The value of any improvements to be constructed;
- (3) The cost of performance of any additional obligations, such as irrigation charges; and
- (4) The cost of performance of restoration and reclamation.

(b) Tribal policy made applicable by § 162.6 of this part may establish or waive specific bond requirements for leases.

(c) We may adjust security or bond requirements at any time to reflect changing conditions.

**§ 162.47 What forms of bonds will the BIA accept?**

(a) We will only accept bonds in the following forms:

- (1) Cash;
- (2) Negotiable Treasury securities that:
  - (i) Have a market value at least equal to the bond amount; and
  - (ii) Are accompanied by a statement granting full authority to the Secretary to sell such securities in case of a violation of the terms of the lease.
- (3) Certificates of deposit that indicate on their face that Secretarial approval is required prior to redemption by any party;
- (4) Irrevocable letters of credit (LOC) issued by federally-insured financial institutions authorized to do business in the United States. LOC's must:
  - (i) Contain a clause that grants the Secretary authority to demand immediate payment if the lessee defaults or fails to replace the LOC within 30 calendar days prior to its expiration date;
  - (ii) Be payable to the Department of the Interior, BIA;
  - (iii) Be irrevocable during its term and have an initial expiration date of not less than one year following the date the BIA receives it; and
  - (iv) Be automatically renewable for a period of not less than one year, unless the issuing financial institution provides the BIA with written notice at least 90 calendar days before the letter of credit's expiration date that it will not be renewed;

(5) Surety bond; or

(6) Any other form of highly liquid, non-volatile security subsequently approved by us that is easily convertible to cash by us and for which Secretarial approval is required prior to redemption by any party.

(b) For tribal leases, a tribe may negotiate a lease term that specifies the use of any of the bond forms described in paragraph (a) of this section.

**§ 162.48 How will a cash bond be administered?**

If you submit a cash bond, the BIA will establish an account in your name with the Office of Trust Funds Management to retain the funds.

**§ 162.49 Is interest paid on a cash performance bond?**

No. We will not pay interest on a cash performance bond.

**§ 162.50 Are cash performance bonds refunded?**

Yes. If the cash performance bond has not been forfeited for cause, we will refund the principal amount deposited

to the depositor at the end of the lease period.

**§ 162.51 Is insurance required for a lease?**

When we determine it to be in the best interest of the Indian landowners, we will require a lessee to provide insurance. If insurance is required, it must:

- (a) Be provided in an amount sufficient to:
  - (1) Protect any improvements on the leased premises;
  - (2) Cover losses such as personal injury or death; and
  - (3) Protect the interest of the Indian landowner.
- (b) Identify the Indian landowners and the United States as insured parties.

**§ 162.52 What types of insurance may be required?**

We may require any or all of the following types of insurance depending upon the activity conducted under the lease: Property, crop, liability, and casualty (such as for fire, hazard, or flood).

**Subpart C—Process for Obtaining a Lease****§ 162.60 Who is responsible for leasing Indian land?**

The Indian landowner is primarily responsible for leasing Indian land, with the assistance and approval of the Secretary, except where otherwise provided by law. You may contact the local BIA office for assistance in leasing Indian land.

**§ 162.61 How do I acquire a lease on Indian land?**

You may acquire a lease on Indian land through either negotiation or responding to an advertisement for competitive bids. A tribe may lease land under either of these methods. We must approve all leases of Indian land in order for the leases to be valid.

**§ 162.62 How do I acquire a lease through negotiation?**

(a) Leases may be negotiated and granted by the Indian landowners with the lessee of their choice. The Secretary also may negotiate and grant leases on behalf of Indian landowners pursuant to § 162.60 (b) and (c) of this part.

(b) Upon the conclusion of negotiations with the Indian landowners or their representatives, and the satisfaction of any applicable conditions, you may submit an executed lease and any required supporting documents to us for appropriate action.

(c) In negotiating a lease, the Indian owners may choose to contribute their land to the project in exchange for their

receipt of a share of the revenues or profits generated by the lease. Under such an arrangement, the lease may be granted to a joint venture or other legal entity owned, in part, by the Indian owners of the land. Unless otherwise required by this title, we will not enter into or approve any agreements related to the formation of such a joint venture or other legal entity.

(d) Receipt of lease payments based upon income received from the land will not, of itself, make the Indian landowner a partner, joint venturer, or associate of the lessee(s).

(e) We will assist prospective lessees in contacting the Indian landowners or their representatives for the purpose of negotiating a lease.

**§ 162.63 What are the basic steps for acquiring a lease through negotiation?**

The basic steps for acquiring a lease by negotiation are:

(a) We receive a request to lease from an Indian landowner or potential lessee;

(b) We prepare the lease documents and provide them to the Indian landowner or potential lessee, or assist the Indian landowner to prepare the documents;

(c) The Indian landowner, or the Secretary on the landowner's behalf, grants (agrees to) a lease;

(d) A potential lessee completes the requirements for securing a lease, *e.g.* bond, payment of administrative fee, etc.;

(e) We review the lease for proper completion and compliance with all applicable laws and regulations;

(f) We issue a decision on the lease based upon our review;

(g) We send the approved lease to the lessee and, upon request, to the Indian landowner; and

(h) We record and maintain the approved lease.

**§ 162.64 Must I negotiate with and obtain the consent of all of the Indian landowners of a fractionated tract for a lease other than an agricultural lease?**

Yes. All Indian landowners of fractionated interests must consent to an agricultural lease.

**§ 162.65 Can I negotiate a contract with an Indian landowner to lease land at a future date?**

In negotiating a lease with Indian landowners or their representatives, a prospective lessee may enter into a contract to lease the land at a future date, with the contract specifying the essential lease terms, as described in § 162.30 of this part, as well as any conditions that must be satisfied before the lease may be granted or approved.

(a) The conditions to be satisfied may require that the lessee comply with

NEPA or other preliminary federal or tribal land use requirements; the conditions also may require that certain permits or financing commitments be obtained before the lease is granted or approved.

(b) We may participate in the contract negotiations (in order to ensure that all of the necessary terms and conditions are identified), but we will not be a party to such a contract.

(c) We will not approve such a contract unless approval is required under 25 U.S.C. § 81 and part 84 of this chapter.

**§ 162.66 How do I acquire an advertised lease through competitive bidding?**

(a) Advertised leases on Indian lands are awarded to the successful bidder after a public bidding process. We will grant or approve the lease on behalf of the Indian landowners and then, approve the lease. The basic steps for acquiring an advertised lease are:

(1) We prepare and distribute an advertisement of lands available for lease that identifies the terms and conditions of the lease sale, including, for agricultural leases, any preference rights;

(2) We solicit sealed bids and conduct the public lease sale;

(3) We determine and accept the highest bid(s), which may require further competitive bidding after the bid opening;

(4) We prepare leases for successful bidders;

(5) The successful bidder completes and submits the lease and satisfies its requirements, *e.g.*, bond, payment of administrative fee, etc.;

(6) We review the lease for proper completion and compliance with all applicable laws and regulations;

(7) We grant the lease on behalf of Indian landowners where we are authorized to do so by law;

(8) We approve the lease;

(9) We distribute the approved lease to successful bidder/lessee and, upon request, to the Indian landowner; and

(10) We record and maintain the approved lease.

(b) [Reserved]

**§ 162.67 Must Indians who own Indian land obtain a lease before using this land for their purposes (owners' use)?**

(a) Indian landowners who own 100 percent (%) of a tract of land are not required to obtain a lease.

(b) If an Indian landowner does not own 100 percent (%) of a tract of land and wants to use the land, he or she must obtain a lease from the co-owners in the tract of land.

**§ 162.68 Must the parents or guardians of minors who own Indian land obtain a lease before using the land?**

A parent, guardian, or other person standing in loco parentis does not need to obtain a lease for lands owned by their minor children if:

(a) Those minor children own 100 percent (%) of the land; and

(b) The minor children directly benefit from the use. We may require the user of the land to provide evidence of a direct benefit to the minor children. When any of the minor children reach the age of majority, the user of the land must obtain a lease from the child for the use to continue.

**Subpart D—Granting a Lease**

**§ 162.70 Who may grant a lease?**

(a) Tribes grant leases of tribal land, including any tribally-owned undivided interest(s) in a fractionated tract. A lease granted by the tribe must be approved by us, unless the lease is authorized by a charter approved by us under 25 U.S.C. § 477, or unless our approval is not required under other applicable federal law. In order to lease tribal land in which the beneficial interest has been assigned to another party, the assignee and the tribe must both grant the lease, subject to our approval.

(b) Individual Indian landowners may grant a lease of their own land, including their undivided interest in a fractionated tract, subject to our approval. Except as otherwise provided in this part, these landowners may include the owner of a life estate holding 100 percent (%) interest in the lease tract.

(c) We may grant a lease on behalf of an individual Indian landowner, as provided in section 162.71.

(d) We will grant permits on Government lands.

**§ 162.71 Who may represent an individual Indian landowner in granting a lease?**

The following individuals or entities may represent an individual Indian landowner:

(a) An adult acting on behalf of:

(1) His or her minor children; or  
(2) Other minor children to whom the adult stands *in loco parentis* who do not have a guardian or other legal representative;

(b) A guardian, conservator, or other fiduciary appointed by a court of competent jurisdiction to act on behalf of an individual Indian landowner;

(c) An adult or legal entity who has been given a written power of attorney which:

(1) Meets all of the formal requirements of any applicable tribal or state law;

(2) Identifies the attorney-in-fact and the land to be leased; and

(3) Describes the scope of the power granted and any limits thereon.

(d) The BIA acting on behalf of:

(1) An individual who is non compos mentis;

(2) An orphaned minor;

(3) An individual Indian landowner who has granted us a durable power of attorney to lease his or her land;

(4) The undetermined heirs and devisees of a deceased Indian landowner;

(5) An Indian landowner whose whereabouts are unknown to us after a reasonable attempt is made to locate the owner;

(6) The Indian landowners of a fractionated tract who:

(i) Have received actual notice of our intent to grant a lease on their behalf; and

(ii) Are unable to agree upon a lease during the three month negotiation period following the notice;

(7) The owners of a minority interest in the Indian ownership of a fractionated tract of Indian agricultural land when the majority interest has consented, as long as the minority interest owners receive fair annual rental;

(8) The owners of "highly fractionated undivided heirship lands," for agricultural leases, consistent with § 162.6 of this part; or (9) The individual Indian owners of fractionated Indian land, when necessary to protect the interests of the individual Indian landowners.

**§ 162.72 May an emancipated minor grant a lease on his or her own Indian land?**

No. An emancipated minor, a person who is under 18 years of age and declared by a court of competent jurisdiction to be an adult, may not grant a lease on his or her own Indian land.

**§ 162.73 When may the Secretary grant permits?**

(a) We may grant a permit on behalf of all individual Indian landowners covering all trust and restricted interests if it is impractical to provide notice to the landowners and no substantial injury to the land would occur.

(b) We will not grant permits on tribal lands except upon request by a tribe.

(c) We will grant permits on Government land.

**§ 162.74 What requirements apply to an agricultural lease on fractionated tracts?**

(a) The owners of a majority interest in the Indian ownership of a fractionated tract may grant an agricultural lease without giving prior

notice to the minority owners as long as the minority interest owners receive fair annual rental. We must approve such leases.

(b) We may grant an agricultural lease on behalf of all owners of a fractionated tract without giving prior notice to the minority owners. Before granting such a lease, we will offer a preference right to any Indian owner who:

(1) Possesses the entire lease tract;

(2) Submits a written offer to lease the land, subject to any required or negotiated terms and conditions, prior to our granting a lease to another party; and

(3) Provides any supporting documents needed to demonstrate the ability to perform all of the lessee's obligations under the proposed lease.

**§ 162.75 When is a decision by the BIA regarding leases effective?**

A decision by the BIA regarding leases is effective 30 days after the issuance of the decision document and exhaustion of all appeal rights.

**Subpart E—Business Leases**

**General Provisions**

**§ 162.80 What types of leases are covered by this part?**

(a) This subpart covers both ground leases (undeveloped land) and leases of developed land (together with the improvements thereon), authorizing the development or use of the leased premises for purposes other than farming, grazing, or use as an individual homesite. The regulations in this subpart also apply to leases made for those other purposes, if appropriate.

(b) Leases covered by this subpart may authorize the construction of single-purpose or mixed use projects designed for use by any number of tenants or occupants. These leases may include:

(1) Residential development leases;

(2) Leases for public, religious, educational, and recreational purposes; and

(3) Commercial or industrial leases for retail, office, manufacturing, storage, and/or other business purposes.

**§ 162.81 How is a business lease obtained?**

You may obtain a lease from an Indian landowner through negotiation. Generally, business leases will not be advertised for competitive bid. We will assist you in contacting the Indian landowners or their representatives for the purpose of negotiating a lease.

**§ 162.82 What supporting documents must I provide?**

(a) If you are a corporation, limited liability company, partnership, joint venture, or other legal entity, you must provide organizational documents, certificates, filing records, and resolutions or other authorization documents, as needed to show that the lease will be enforceable against the lessee and that the lessee will be able to perform all of its lease obligations.

(b) You must provide an appraisal, or other appropriate valuation, and financial *pro forma*, to support any negotiated rent and term provisions in the lease.

(c) You must provide current financial statements and credit reports or, where such records are not available, other appropriate documentation, to show that you will be able to meet the monetary obligations under the lease.

(d) If the lease authorizes new construction, you must provide:

(1) Environmental reports, which may include an environmental baseline survey, and archaeological reports and other documents, as determined by us to be necessary to facilitate our compliance with federal and tribal environmental and land use requirements;

(2) A preliminary site plan identifying the proposed location of any new buildings, roads and utilities, and a construction schedule showing the tentative commencement and completion dates for those improvements; and

(3) A certified survey plat depicting the boundaries of the leased premises and the location of any existing improvements and encumbrances.

**Rent and Term**

**§ 162.83 How much rent must a lessee pay?**

(a) The lease must require the initial payment of a fair annual rental, based on a fixed amount and/or a percentage of the projected income to be derived from the land, unless a lesser amount is permitted under paragraphs (b)–(c) of this section. If new construction is required, the lease may provide for the payment of less than a fair annual rental during the pre-development and construction periods specified in the lease.

(b) We will approve a negotiated lease of tribal land which provides for the payment of nominal rent, or less than a fair annual rental, if the tribe provides a resolution (or appropriate final tribal decision) and a written explanation indicating how approval will serve the tribe's best interest over the entire period in which the reduced rent will be paid.

(c) We will approve (but not grant) a lease of individually owned Indian land which provides for the payment of nominal rent, or less than a fair annual rental, if:

(1) The lease is for religious, educational, recreational, or other public purposes;

(2) The lease is for business purposes, and the lessee is the individual Indian landowner's spouse, brother, sister, lineal ancestor, lineal descendant, or co-owner; or

(3) The lessee is a joint venture or other legal entity in which the Indian owners directly participate in the revenues or profits generated by the lease, and the distribution of profits or revenues to the owners is projected to exceed the rent which would otherwise be paid over the entire lease term.

(d) The lease must provide for a rental adjustment at least every fifth year, unless the lessee is paying less than a fair annual rental or a rental based primarily on a percentage of the income derived from the land. If adjustments are required, the lease must specify:

(1) When adjustments are made;

(2) Who makes the adjustments;

(3) What the adjustments are based on; and

(4) How disputes arising from the adjustments are resolved.

**§ 162.84 Is a surety bond or guaranty required?**

(a) Yes. Unless the lease provides otherwise, you must furnish a surety bond or unconditional guaranty to secure the contractual obligations. If a bond or guaranty is required, you must furnish it before we grant or approve the lease.

(b) The lease may require that the surety bond or guaranty remain effective throughout the lease term and any holdover or renewal period.

Alternatively, the lease may provide for the bond or guaranty to be modified or released:

(1) After a specified period of time;

(2) When the income generated by the lease reaches a specified level;

(3) If we determine that the original bond or guaranty is no longer needed to secure the contractual obligations; or

(4) If, for leases on tribal lands, the tribe requests the modification or release of the bond, and we approve the request.

(c) If the lease does not initially require a surety bond or guaranty, or if it provides for modification or release at some future date, the lease must allow us to establish or reinstate a bond or guaranty requirement at any time we deem it necessary to secure the contractual obligations. A tribe may

request that we establish or reinstate a bond or guaranty requirement as may be necessary.

(d) We will review the surety bond or guaranty documents to ensure that they include the necessary waivers. We may require that the surety or guarantor provide any supporting documents needed to show that the bond or guaranty will be enforceable, and that the surety or guarantor will be able to perform the guaranteed obligations. The bond must be provided by a company certified by the Department of the Treasury as an acceptable surety on federal bonds.

(e) The lease must require that you obtain the consent of the surety or guarantor, with respect to any amendment, assignment, sublease, or leasehold mortgage. The lease must also provide for the surety or guarantor to receive a copy of any notice of default issued to the lessee by us or by the Indian owners.

**§ 162.85 Can a lease be renewed?**

(a) Unless otherwise provided by law (such as 25 U.S.C. 415(a)), the lease may provide the lessee with an option to renew the lease for a single renewal period of no more than 25 years, so long as the maximum term permitted under federal law is not exceeded. If an option to renew is provided, the lease must specify:

(1) The time and manner in which the option must be exercised; and

(2) Any additional consideration which will be due upon the exercise of the option or the commencement of the renewal period.

(b) The lease may not:

(1) Be renewed or extended by holdover;

(2) Provide an option to renew which covers less than the entire lease tract; or

(3) Provide a right of first refusal or any other type of preference with respect to a new lease.

**§ 162.86 May a lease be terminated prior to its expiration date?**

(a) Yes. The lease may provide either party with one or more options to cancel, for any reason. If an option to cancel is provided, the lease must specify the time and manner in which the option must be exercised. If the lessee is a joint venture or other legal entity in which the Indian owners participate directly in the revenues or profits generated by the lease, the lease must:

(1) Provide the Indian landowners with an option to cancel if the actual revenues or profits fall significantly below the initial projections; and

(2) Specify the time, manner, and terms upon which a new lease will be

entered into with the successor-in-interest to the joint venture or legal entity whose lease is being canceled.

(b) The lease may provide the Indian landowners with a buyout option or an option to recapture the land upon the occurrence of certain conditions, such as a proposed renewal or assignment of the lease. If such an option is provided, the lease must specify the time and manner in which the option must be exercised.

(c) The lease may be terminated by agreement with the Indian landowners, subject to our approval. The lease may not be surrendered without such an agreement, nor will it be terminated if the Indian landowners retake possession upon abandonment of the land.

(d) In a default, the lease may be terminated by us or by the Indian landowners, in accordance with the negotiated remedies provided in the lease. The lease may also be canceled by us for cause under subpart H of this part.

**Consents and Approvals**

**§ 162.87 How and when can a lease be amended?**

A lease may be amended at any time, with the consent of the parties to the lease and our approval. The consent of the Indian landowners must be obtained in the same manner as the original grant of the lease, unless the lease authorizes one or more of the landowners to consent to certain types of amendments on behalf of all of the Indian landowners. The lease may not provide such an authorization with respect to any amendment which:

(a) Modifies the lessee's payment obligations;

(b) Extends the lease term;

(c) Expands the lease area; or

(d) Terminates the lease.

**§ 162.88 May a lease be assigned, sublet, or mortgaged without the consent of the Indian landowners?**

(a) Unless the lease provides otherwise, the leased premises may only be assigned, sublet, or mortgaged without the consent of the Indian landowners in the circumstances described in paragraphs (b)–(e) of this section. If the owners' consent is required, it must be obtained in the same manner as the original grant of the lease, unless the lease authorizes one or more of the Indian landowners to consent on behalf of all such owners.

(b) The lease may be assigned without the consent of the Indian landowners if:

(1) The assignee is a leasehold mortgagee or its designee, acquiring the lease either through foreclosure or by conveyance; and

(2) The assignee agrees in writing to assume all of the lessee's obligations under the lease.

(c) Part of the leased premises may be sublet without the consent of the Indian landowners when:

(1) The sublease is:

(i) Part of a large commercial development;

(ii) Part of a housing development; or

(iii) For residential purposes (including a development by a tribally designated housing entity as defined under 25 U.S.C. 4103(21)); and

(2) We have approved a sublease form and rent schedule for use in the project.

(d) The lease may be mortgaged without further consent of the Indian landowners if the lease contains a general authorization for such a mortgage, and the lease was negotiated with the understanding that it would be used to secure certain types of financing.

**§ 162.89 May the Indian landowners withhold their consent to an assignment or encumbrance?**

Yes. However, Indian landowners are encouraged not to withhold their consent unreasonably. A lease may require that:

(a) The Indian landowners specify their reasons for withholding consent; and

(b) The owners' consent will be deemed granted if a response to a request for consent is not given within a specified time period.

**§ 162.90 May a lease be assigned, sublet, or mortgaged without the BIA's approval?**

(a) The lease may not be mortgaged without our approval of the mortgage instrument. Except as provided in paragraphs (b)–(c) of this section, the leased premises may not be assigned or sublet without our approval.

(b) The lease may be assigned without our approval if:

(1) The assignee is a leasehold mortgagee or its designee, acquiring the lease either through foreclosure or by conveyance; and

(2) The assignee agrees in writing to assume all of the obligations under the lease.

(c) Part of the leased premises may be sublet without our approval when:

(1) The sublease is part of a large commercial or residential development; and

(2) We have approved a sublease form and rent schedule for use in the project.

(d) Assignees and sublessees must meet all bonding requirements for the leasehold interest, as provided in § 162.49.

**§ 162.91 How will the BIA decide whether to approve an assignment or sublease?**

(a) We will approve the assignment or sublease if:

(1) The required consents have been obtained from the Indian owners and any sureties or guarantors;

(2) The lessee is not in default, and will remain liable under the lease;

(3) The assignee agrees to be bound by, or the sublessee agrees to be subordinated to, the terms of the lease; and

(4) We find no compelling reason to withhold our approval in order to protect the best interests of the Indian owners.

(b) In making the finding required by paragraph (a)(4) of this section, we will consider whether:

(1) An equitable division of the income from the assignment or sublease is needed;

(2) The proposed use by the assignee or sublessee will require an amendment of the lease;

(3) The value of any part of the leased premises not covered by the assignment or sublease would be adversely affected; and

(4) The assignee or sublessee has provided supporting documents which demonstrate that the lease or sublease will be enforceable against the assignee or sublessee, and that the assignee or sublessee will be able to perform its obligations under the lease or sublease.

**Subpart F—Compensation to Indian Landowners**

**§ 162.100 What does the BIA do with rent payments received from lessees?**

Rent will be distributed to the Indian landowners in accordance with the interest that each owns in the leased land. The rent will be deposited to the appropriate account maintained by the Office of Trust Funds Management in accordance with 25 CFR part 115.

**§ 162.101 How do Indian landowners receive rent payments?**

Funds will be paid to the Indian landowners by the Office of Trust Funds Management in accordance with 25 CFR part 115.

**§ 162.102 How will the rent be distributed if the lease covers more than one tract of land with different owners?**

Except where otherwise provided in the lease, the rent will be prorated based upon the number and size of the tracts in relation to the total leasehold, and distributed to each owner according to their fractional share of each tract.

**Subpart G—Administrative Fees**

**§ 162.110 Are there administrative fees for a lease?**

Yes. We will charge an administrative fee before approving any lease, permit, sublease, assignment, encumbrance, modification, or other related document.

**§ 162.111 How are administrative fees determined?**

(a) Except as provided in paragraph (b) of this section, we will charge administrative fees based on the annual rent, according to the following table:

If the annual rent is * * *	Then the administrative fee will be * * *
Less than \$500 .....	3% of the annual rent.
Between \$500.00 and \$5,000.00.	2% of the annual rent.
Greater than \$5,000.00.	1% of the annual rent.
Percentage rental .....	Based on the minimum annual rental or an estimated percentage of rental.
Crop share rental .....	Based on estimated value of the crop share.

(b) The minimum administrative fee is \$10.00 and the maximum administrative fee is \$500.00.

(c) If a tribe performs all or part of the administrative duties for this part under Public Law 93–638, the tribe may establish, collect, and use reasonable fees to cover its costs associated with the performance of administrative duties.

(d) The fees for subleases, assignments, encumbrances, modifications, or other related documents will be in accordance with the table in paragraph (a) of this section.

**§ 162.112 Are administrative fees refundable?**

No. We will not refund administrative fees.

**§ 162.113 May the Secretary waive administrative fees?**

Yes. We may waive the administrative fee for a justifiable reason.

**§ 162.114 Are there any other administrative or tribal fees, taxes, or assessments that must be paid?**

(a) The lessee may be required to pay additional fees, taxes, and/or assessments associated with the use of the land as determined by us or by the tribe.

(b) If the leased land is within an Indian irrigation project or drainage district, the lessee must pay all charges that may accrue during the term of the

lease. These may include charges for operation and maintenance of the irrigation project unless superseded by part 171 of this chapter. The lessee must pay the appropriate official in charge of the irrigation project or drainage district having jurisdiction.

#### **Subpart H—Lease Violations**

##### **§ 162.120 What lease violations are addressed by this subpart?**

This subpart addresses violations of lease provisions other than trespass. Trespass is addressed under subpart L of this part.

##### **§ 162.121 How will the Secretary enforce compliance with lease provisions?**

When reasonable grounds exist, the Secretary may enter the leased premises, consistent with provisions in the lease, at any reasonable time with or without prior notice to determine whether there has been a violation of the lease provisions and to protect Indian trust assets.

##### **§ 162.122 What happens if a violation of a lease occurs?**

If we determine that a violation of the lease has occurred based on facts known to us, as soon as practicable we will notify the lessee and the sureties of the violation by certified mail—return receipt requested. This notice will include an explanation of the violation.

##### **§ 162.123 What will a written notice of a violation contain?**

The written notice will provide the lessee with ten days from the receipt of the notice to:

- (a) Cure the violation and notify us that the violation is cured;
- (b) Explain why we should not cancel the lease; or
- (c) Request in writing additional time to complete corrective actions. If additional time is granted, we may require that you take certain corrective actions immediately.

##### **§ 162.124 Can a determination of a violation be contested?**

Yes. In the written notice of violation we will advise the lessee of the procedure to follow to contest our determination that a violation of the lease has occurred.

##### **§ 162.125 What happens to a bond if a violation occurs?**

We may apply the bond to remedy the violation, in which case we will require you to submit a replacement bond of an appropriate amount. Our decision setting the amount of the appeal bond may not be appealed.

##### **§ 162.126 What happens if you do not cure a lease violation?**

- (a) We will:
  - (1) Issue a written determination to cancel the lease if the violation is not cured. The decision letter will contain:
    - (i) An explanation why we are canceling the lease;
    - (ii) An order to vacate the property;
    - (iii) Notice of the right to appeal under part 2 of this chapter;
    - (iv) An order to pay delinquent rentals, damages, and other charges; and
    - (v) A requirement to post an appeal bond if applicable.
  - (2) Notify all interested parties, including the Indian landowners, in writing as soon as practicable, by certified mail—return receipt requested, of our determination to cancel a lease.

(b) We may require you to post an appeal bond in an amount determined by us. The amount of the appeal bond will be the amount of damages, and additional rentals expected to accrue during the settlement of the appeal.

##### **§ 162.127 If you do not cure a violation, what may an Indian landowner do?**

- (a) If a violation is not cured within the required time frame, the lessor may exercise rights under the lease, including a right of entry, if any, or request that we cancel the lease.
- (b) If a lease authorizes termination according to tribal or other law, or provides for the resolution of certain types of disputes through alternative dispute resolution methods, the lease provisions will govern in place of this part.

##### **§ 162.128 Can the Secretary take emergency action without prior notice if the leased premises are being damaged?**

Yes. If the lessee causes or contributes to a severe harm to the premises, the Secretary may take appropriate emergency action, in consultation with the Indian landowner, by:

- (a) Initiating action to cancel the lease;
- (b) Requiring immediate cessation of the activity resulting in the harm;
- (c) Ordering the lessee to vacate the premises immediately; and
- (d) Taking legal action as may be appropriate, including seeking emergency judicial action.

##### **§ 162.129 What rights does a lessee have if the Secretary takes emergency action under this subpart?**

- A lessee may:
  - (a) Agree to remedy the harm in a manner and time frame satisfactory to the Secretary and the Indian landowner;
  - (b) Seek to have the lease reinstated after the harm to the property has been cured; and

- (c) Contest the Secretary's emergency actions under 25 CFR Part 2.

#### **Subpart I—Appeals**

##### **§ 162.130 May decisions by the Secretary be appealed?**

(a) Except where otherwise provided in this part, appeals from decisions of the Secretary under this part may be taken pursuant to 25 CFR part 2.

(b) As may be necessary to protect the interests of the Indian landowner, we may require the appellant (or lessee) to post a bond in an amount sufficient to guarantee restoration of the Indian land if our decision to grant or approve the lease is reversed.

#### **Subpart J—Non-Trust Interests**

##### **§ 162.140 May the Secretary grant or approve leases for non-trust interests in Indian land?**

No. The Secretary has no statutory authority to grant or approve leases for non-trust interests in Indian land.

##### **§ 162.141 Are non-trust interests included in a lease?**

No. The undivided non-trust interests are not included in a lease granted or approved by the BIA.

##### **§ 162.142 How will a lessee know there is a non-trust interest in Indian land?**

When we lease Indian land, we will advise the lessee that the title to the Indian land contains non-trust interest(s). Upon request, and subject to applicable law, we will provide the lessee with the information we have in our records identifying the owner of the non-trust interest(s).

##### **§ 162.143 From whom must a lessee lease a non-trust interest?**

A lessee must lease any non-trust interest(s) directly from owner(s) of the non-trust interest(s).

##### **§ 162.144 Is the non-trust interest shown in a lease of Indian land?**

No. The lease terms will describe only the Indian owned interest. For example, if the Indian owned interests constitutes  $\frac{3}{4}$  of the Indian land, the land will be described as: An undivided  $\frac{3}{4}$  interest in and to the W/2 SW/4, Section 1, Township 10 North, Range 1 East, Principal Meridian, Billings, Montana. This will notify the lessee that the full interest in the tract has not been leased. The remaining undivided  $\frac{1}{4}$  interest is the non-trust interest and the lessee must contact the non-trust interest owners directly to secure a lease of their interest.

**§ 162.145 How much rent is due for the non-trust interest?**

It is the responsibility of the lessee to contact the non-trust owners to negotiate the amount of rental to be paid and to make rental payments to the owners of the non-trust interest.

**§ 162.146 May a lease payment made by a lessee to the BIA or to an Indian landowner include payment for any non-trust interest?**

No. Payment for a non-trust interest must be made to the owner of that interest.

**§ 162.147 Will the BIA grant or approve a lease on a fractionated tract that is subject to a life estate held by the owner of a non-trust interest?**

We will grant or approve a lease on a fractionated tract that is subject to a life estate held by the owner of a non-trust interest only when it is necessary to preserve the value of the trust interests in the land.

**Subpart K—Valuation****§ 162.150 Why must the Secretary determine the fair annual rental of Indian land?**

The BIA must determine the fair annual rental of Indian land in order to:

- (a) Assist the Indian landowner in negotiating a lease with potential lessees; and
- (b) Enable the Secretary to determine whether a lease is in the best interests of the Indian landowner.

**§ 162.151 How does the Secretary determine the fair annual rent of Indian land?**

The Secretary determines the fair annual rent for lease by appraisal, advertisement, competitive bidding, negotiation, or any other appropriate method, in accordance with the Uniform Standards of Professional Appraisal Practices (USPAP).

**§ 162.152 Will the BIA ever grant or approve a lease at less than fair annual rental?**

(a) We will grant an agricultural lease of individually owned Indian land at less than fair annual rental if, after advertising the lease, we determine that such action would be in the best interests of the individual Indian landowners.

(b) We may approve a lease of individually owned Indian land at less than fair annual rental if:

- (1) The lease is for religious, educational, recreational, or other public purposes;
- (2) The lease is for a homesite for the landowner's spouse, brother, sister, lineal ancestor, lineal descendent or co-owner; or

(3) We determine it is in the best interest of the Indian landowners.

(c) We may approve a lease of tribal land at less than fair annual rental if:

- (1) The lease is for religious, educational, recreational, or other public purposes;
- (2) The lease is for residential, agricultural, or business purposes and the lessee is a tribal member or tribal entity; or
- (3) We determine that it is in the best interest of the tribe.

(d) We will not grant or approve leases not addressed in paragraphs (a) through (c) of this section at less than fair annual rental.

**Subpart L—Trespass****§ 162.160 What is trespass?**

Under this part, trespass is any unauthorized occupancy, use of, or action on Indian agricultural and government lands. The following are some examples of trespass:

- (a) Cultivating or harvesting of irrigated or non-irrigated crops or the harvesting of native hay, forage, or seed;
- (b) Erecting or damaging fencing, gates or other structures;
- (c) Developing water resources;
- (d) Commercial filming or photography;
- (e) Sale or barter of goods or services;
- (f) Placing or storing of beehives;
- (g) Cutting, damaging, taking, harvesting, or removing agricultural products for commercial purposes, including but not limited to: berries, nuts, flowers, seeds, moss, cones, leaves, mushrooms, cactus, yucca, and greenery;
- (h) Recreation, hunting, trapping, or fishing;

(i) Disturbing soil, plants, or otherwise exposing or disturbing, damaging, or removing archaeological or paleontological resources;

(j) Littering or disposing of agricultural related products, hazardous waste, household or business waste, or garbage;

(k) Applying pesticides without proper certification or misusing pesticides;

(l) Aquaculture or the harvesting of fish raised for commercial sale or consumption;

(m) Unauthorized livestock activities, including:

- (1) Driving livestock across Indian land without an approved crossing permit;
- (2) Allowing livestock to drift and graze on Indian land without an approved grazing permit;
- (3) Grazing livestock within an area closed to grazing of that class of livestock; and

(4) Grazing livestock in an area withdrawn from use by the BIA when damage to the Indian land is occurring due to improper handling of livestock; and

(n) Other actions designated by tribes as acts of trespass on Indian agricultural lands.

**§ 162.161 What is the BIA's trespass policy?**

We will:

(a) Investigate accidental, and willful, or incidental trespass.

(b) Respond to alleged trespass in a prompt, efficient manner.

(c) Assess trespass penalties for the value of products used or removed, cost of damage to the Indian land, and enforcement costs incurred as a consequence of the trespass.

(d) Ensure that unnecessary or undue damage to Indian lands resulting from trespass is rehabilitated and stabilized at the expense of the trespasser.

**§ 162.162 Who can enforce this subpart?**

(a) The BIA enforces the provisions of this subpart. If the tribe adopts the provisions of this subpart, the tribe will have concurrent jurisdiction to enforce this subpart. Additionally, if the tribe so requests, we will defer to tribal prosecution of trespass on Indian agricultural lands.

(b) The provisions in this subpart are exclusive of, and in addition to, any tribal action that may be taken under tribal law.

**Notification****§ 162.163 How are trespassers notified of a trespass determination?**

(a) Unless otherwise provided under tribal law, when we have reason to believe that a trespass on Indian agricultural land has occurred, we or the authorized tribal representative will provide written notice to the alleged trespasser, the possessor of trespass property, any known lien holder, and the beneficial Indian landowner, as appropriate. The written notice will include the following:

- (1) The basis for the trespass determination;
- (2) A legal description of where the trespass occurred;
- (3) A verification of brands in the State Brand Book for cases of livestock trespass;
- (4) Corrective actions that must be taken;
- (5) Time frames for taking the corrective actions; and
- (6) Potential consequences and penalties for failure to take corrective action.

(b) If we determine that the identity of the alleged trespasser or possessor of

trespass property is unknown or if the trespasser refuses delivery of the written notice, a public trespass notice will be posted at the tribal community building and at the United States Post Office, and published in the local newspaper nearest to the Indian agricultural lands where the trespass is occurring.

(c) Trespass notices under this subpart are not subject to appeal under 25 CFR part 2.

**§ 162.164 What can I do if I receive a trespass notice?**

If you receive a trespass notice, you may within the time frame specified in the notice:

(a) Comply with the ordered corrective actions; or

(b) Contact us in writing to explain why the trespass notice is in error. You may contact us by telephone, but any official explanation of trespass must be in writing. If we determine that we issued the trespass notice in error, we will withdraw the notice.

**§ 162.165 Who else will the BIA notify?**

We will notify anyone in possession of the Indian land on which the unauthorized livestock or other property has been identified that such property could be Indian trust property and that no action to remove or otherwise dispose of the unauthorized livestock or other property may be taken unless authorized by us.

**Actions**

**§ 162.166 What actions does the BIA take against trespassers?**

If the trespasser fails to comply with the corrective action specified by us, we may take one or more of the following actions, as appropriate:

(a) Seize, impound, sell or dispose of unauthorized livestock or other property involved in the trespass. We may keep such seized property for use as evidence.

(b) Assess penalties, damages, and costs, under § 162.172.

**§ 162.167 When will we impound unauthorized livestock or other property?**

We will impound unauthorized livestock or other property under the following conditions:

(a) If there is imminent danger of severe injury to a growing or harvestable crop or destruction of the range forage.

(b) When either you or your representative refuses to accept delivery of a written notice of trespass and you do not remove the unauthorized livestock or other property within the period prescribed in the written notice.

(c) Any time after five days of providing notice of impoundment if you failed to correct the trespass.

**§ 162.168 How will you be notified if your unauthorized livestock or other property are to be impounded?**

(a) We will send written notice of the intent to impound unauthorized livestock or other property to you or your representative, and to any known lien holder of the unauthorized livestock or other property, if you do not correct the trespass in the time specified in the initial trespass notice.

(b) If we determine that the identity of the owner of the unauthorized livestock or other property or his/her representative is unknown, or if the owner or his/her representative refuses delivery of the written notice, a public notice of intent to impound will be posted at the tribal community building and the United States Post Office, and published in the local newspaper nearest to the Indian agricultural lands where the trespass is occurring.

(c) After we have given notice as described in paragraphs (a) and (b) of this section, we will impound unauthorized livestock or other property without any further notice.

**§ 162.169 What will we do after we impound unauthorized livestock or other property?**

Following the impoundment of unauthorized livestock or other property, we will provide notice that we will sell the impounded property as follows:

(a) We will provide written notice of the sale to the owner, his/her representative, and any known lien holder. The written notice must include the procedure by which the impounded property may be redeemed prior to the sale.

(b) We will provide public notice of sale of impounded property by posting at the tribal community building and the United States Post Office, and publishing in the local newspaper nearest to the Indian agricultural lands where the trespass is occurring. The public notice will include a description of the impounded property, and the date, time and place of the public sale. The sale date must be at least five days after the publication and posting of notice.

**§ 162.170 How do I redeem my impounded livestock or other property?**

You may redeem impounded property by submitting proof of ownership and paying all penalties, damages, and costs under § 162.172, and completing all corrective actions that we identify under § 162.163.

**§ 162.171 How will the sale of impounded livestock or other property be conducted?**

(a) Unless the owner or known lien holder of the impounded property redeems the property prior to the time set by the sale, by submitting proof of ownership and the settlement of all obligations under § 162.163 and § 162.172, the property will be sold by public sale to the highest bidder.

(b) If a satisfactory bid is not received, we may reoffer the property for sale, return it to the owner, condemn and destroy it, or otherwise dispose of it.

(c) We will give the purchaser a bill of sale or other written receipt evidencing the sale.

**Penalties, Damages and Costs**

**§ 162.172 What are the penalties, damages, and costs payable by trespassers on Indian land?**

Trespassers on Indian land must pay the following penalties and costs:

(a) A penalty of three times the daily equivalent of the rental rate under the permit for each day of trespass;

(b) The reasonable value of forage or crops consumed or destroyed;

(c) Expenses incurred in gathering, impounding, caring for, and disposal of livestock in cases which necessitate impoundment under § 162.167;

(d) The costs associated with any damage to Indian land;

(e) The value of the property illegally used or removed, plus a penalty of double its value;

(f) The costs associated with enforcement of the regulations, including field examination and survey, damage appraisal, investigation assistance and reports, witness expenses, demand letters, court costs, and attorney fees; and

(g) All other penalties authorized by law.

**§ 162.173 How will the BIA determine the value of forage or crops consumed or destroyed?**

We will determine the value of forage or crops consumed or destroyed based upon the average rate received per month for comparable property or grazing privileges, or the estimated commercial value for such property or privileges.

**§ 166.174 How will the BIA determine the value of the product illegally used or removed?**

We will determine the value of the property illegally used or removed based upon a valuation of similar property.

**§ 162.175 How will the BIA determine the amount of damages to Indian land?**

We will determine the damages by considering the costs of rehabilitation and revegetation, loss of future revenue, loss of profits, loss of productivity, loss of market value, damage to other resources, and other factors.

**§ 162.176 How will the BIA determine the costs associated with enforcement of the trespass?**

Costs of enforcement may include detection and all processes through prosecution and collection of damages. This covers field examination and survey, damage appraisal, investigation assistance and report preparation, witness expenses, demand letters, court costs, attorney fees, and other costs.

**§ 162.177 What happens if I do not pay the assessed penalties, damages and costs?**

Unless otherwise provided by tribal law:

(a) We will refuse to issue you a permit for the use, development, or occupancy of Indian lands.

(b) We will forward the case for appropriate legal action.

**§ 162.178 How are the proceeds from trespass distributed?**

Unless otherwise provided by tribal law:

(a) We will treat any amounts recovered under § 162.175 as proceeds from the sale of agricultural property from the Indian agricultural land upon which the trespass occurred.

(b) All amounts collected in excess of the amounts assessed under § 162.172 will be applied by us against costs associated with the enforcement of this subpart.

(c) If we seize and dispose of impounded livestock or other property of the trespasser, we will apply any cash or other proceeds to satisfy the penalties and costs of enforcement. If any money is left over, we will return it to the trespasser or, where we cannot identify the owner of the impounded property, we will deposit the net proceeds of the sale into the accounts of the landowners where the trespass occurred.

**§ 162.179 What happens if the BIA does not collect enough money to satisfy the penalty?**

If we do not collect enough money from the trespasser, we will distribute collected penalties as follows:

(a) All amounts collected up to and including the amount assessed under §§ 162.171 through 162.172 will be distributed equally between the beneficial Indian landowner and towards the cost of restoring the Indian land.

(b) Written notice will be sent to the trespasser and any known lienholders to demand immediate settlement and to advise the trespasser that unless settlement is received within five working days from the date of receipt, the case will be forwarded for appropriate legal action.

**Subpart M—Records****§ 162.180 Who owns records associated with this part?**

Any records generated in the fulfillment of the part are the property of the United States, and must be maintained in accordance with approved records retention procedures under the Federal Records Act, 44 U.S.C. § 3101, *et seq.*

**Subpart N—Special Requirements for Certain Reservations****§ 162.190 Crow Reservation.**

(a) Notwithstanding the regulations in other sections of this part 162, Crow Indians classified as competent under the Act of June 4, 1920 (41 Stat. 751), as amended, may lease their trust lands and the trust lands of their minor children for farming or grazing purposes without the approval of the Secretary pursuant to the Act of May 26, 1926 (44 Stat. 658), as amended by the Act of March 15, 1948 (62 Stat. 80). However, at their election Crow Indians classified as competent may authorize the Secretary to lease, or assist in the leasing of such lands, and an appropriate notice of such action shall be made a matter of record. When this prerogative is exercised, the general regulations contained in this part 162 shall be applicable. Approval of the Secretary is required on leases signed by Crow Indians not classified as competent or made on inherited or devised trust lands owned by more than five competent devisees or heirs.

(b) The Act of May 26, 1926 (44 Stat. 658), as amended by the Act of March 15, 1948 (62 Stat. 80), provides that no lease for farming or grazing purposes shall be made for a period longer than five years, except irrigable lands under the Big Horn Canal; which may be leased for periods of ten years. No such lease shall provide the lessee a preference right to future leases which, if exercised, would thereby extend the total period of encumbrance beyond the five or ten years authorized by law.

(c) All leases entered into by Crow Indians classified as competent, under the above-cited special statutes, must be recorded at the Crow Agency. Such recording shall constitute notice to all persons. Under these special statutes, Crow Indians classified as competent

are free to lease their property within certain limitations. The five-year (ten-year in the case of lands under the Big Horn Canal) limitation is intended to afford a protection to the Indians. The essence of this protection is the right to deal with the property free, clear, and unencumbered at intervals at least as frequent as those provided by law. If lessees are able to obtain new leases long before the termination of existing leases, they are in a position to set their own terms. In these circumstances lessees could perpetuate their leaseholds and the protection of the statutory limitations as to terms would be destroyed. Therefore, in implementation of the foregoing interpretation, any lease which, on its face, is in violation of statutory limitations or requirements, and any grazing lease executed more than 12 months, and any farming lease executed more than 18 months, prior to the commencement of the term thereof or any lease which purports to cancel an existing lease with the same lessee as of a future date and take effect upon such cancellation will not be recorded. Under a Crow tribal program, approved by the Department of the Interior, competent Crow Indians may, under certain circumstances, enter into agreements which require that, for a specified term, their leases be approved. Information concerning whether a competent Crow Indian has executed such an instrument is available at the office of the Superintendent of the Crow Agency, Bureau of Indian Affairs, Crow Agency, Montana. Any lease entered into with a competent Crow Indian during the time such instrument is in effect and which is not in accordance with such instrument will be returned without recordation.

(d) Where any of the following conditions are found to exist, leases will be recorded but the lessee and lessor will be notified upon discovery of the condition:

(1) The lease in single or counterpart form has not been executed by all owners of the land described in the lease;

(2) There is, of record, a lease on the land for all or a part of the same term;

(3) The lease does not contain stipulations requiring sound land utilization plans and conservation practices; or

(4) There are other deficiencies such as, but not limited to, erroneous land descriptions, and alterations which are not clearly endorsed by the lessor.

(e) Any adult Crow Indian classified as competent shall have the full responsibility for obtaining compliance with the terms of any lease made by him

pursuant to this section. This shall not preclude action by the Secretary to assure conservation and protection of these trust lands.

(f) Leases made by competent Crow Indians shall be subject to the right to issue permits and leases to prospect for, develop, and mine oil, gas, and other minerals, and to grant rights-of-way and easements, in accordance with applicable law and regulations. In the issuance or granting of such permits, leases, rights-of-way or easements due consideration will be given to the interests of lessees and to the adjustment of any damages to such interests. In the event of a dispute as to the amount of such damage, the matter will be referred to the Secretary whose determination will be final as to the amount of said damage.

#### § 162.191 Fort Belknap Reservation.

Not to exceed 20,000 acres of allotted and tribal lands (nonirrigable as well as irrigable) on the Fort Belknap Reservation in Montana may be leased for the culture of sugar beets and other crops in rotation for terms not exceeding 10 years.

#### § 162.192 Cabazon, Augustine, and Torres-Martinez Reservations, California.

(a) Upon a determination by the Secretary that the owner or owners are not making beneficial use thereof, restricted lands on the Cabazon, Augustine, and Torres-Martinez Indian Reservations which are or may be irrigated from distribution facilities administered by the Coachella Valley County Water District in Riverside County, California, may be leased by the Secretary in accordance with the regulations in this part for the benefit of the owner or owners.

(b) All leases granted or approved on restricted lands of the Cabazon, Augustine, and Torres-Martinez Indian Reservations shall be filed for record in the office of the county recorder of the county in which the land is located, the cost thereof to be paid by the lessee. A copy of each such lease shall be filed by the lessee with the Coachella Valley County Water District or such other irrigation or water district within which the leases lands are located. All such leases shall include a provision that the lessee, in addition to the rentals provided for in the lease, shall pay all irrigation charges properly assessed against the land which became payable during the term of the lease. Act of August 25, 1950 (64 Stat. 470); Act of August 28, 1958 (72 Stat. 968).

#### § 162.193 Colorado River Reservation.

The Act of April 30, 1964 (78 Stat. 188), fixed the beneficial ownership of the Colorado River Reservation in the Colorado River Indian Tribes of the Colorado River Reservation and authorized the Secretary of the Interior to approve leases of said lands for such uses and terms as are authorized by the Act of August 9, 1955 (69 Stat. 539), as amended (25 U.S.C. 415 *et seq.*), including the same uses and terms as are permitted thereby on the Agua Caliente (Palm Springs), Dania, Navajo, and Southern Ute Reservations. Regulations in this part 162 govern leasing under the Act of August 9, 1955. Therefore, part 162 shall also govern the leasing of lands on the Colorado River Reservation: Provided, however, That application of this part 162 shall not extend to any lands lying west of the present course of the Colorado River and south of sec. 12 of T. 5 S., R. 23 E., San Bernardino base and meridian in California and shall not be construed to affect the resolution of any controversy over the location of the boundary of the Colorado River Reservation; Provided further, That any of the described lands in California shall be subject to the provisions of this part 162 when and if determined to be within the reservation.

#### § 162.194 San Xavier and Salt River Pima-Maricopa Reservations.

(a) Purpose and scope. The Act of November 2, 1966 (80 Stat. 1112), provides statutory authority for long-term leasing on the San Xavier and Salt River Pima-Maricopa Reservations, Ariz., in addition to that contained in the Act of August 9, 1955 (69 Stat. 539), as amended (25 U.S.C. 415). When leases are made under the 1955 Act on the San Xavier or Salt River Pima-Maricopa Reservations, the regulations in part 162 apply. The purpose of this section is to provide regulations for implementation of the 1966 Act. The 1966 Act does not apply to leases made for purposes that are subject to the laws governing mining leases on Indian lands.

(b) Duration of leases. Leases made under the 1966 Act for public, religious, educational, recreational, residential, or business purposes may be made for terms of not to exceed 99 years. The terms of a grazing lease shall not exceed 10 years; the term of a farming lease that does not require the making of a substantial investment in the improvement of the land shall not exceed 10 years; and the term of a farming lease that requires the making of a substantial investment in the improvement of the land shall not exceed 40 years. No lease shall contain

an option to renew which extends the total term beyond the maximum term permitted by this section.

(c) Required covenant and enforcement thereof. Every lease under the 1966 Act shall contain a covenant on the part of the lessee that he will not commit or permit on the leased land any act that causes waste or a nuisance or which creates a hazard to health of persons or to property wherever such persons or property may be.

(d) Notification regarding leasing proposals. If the Secretary determines that a proposed lease to be made under the 1966 Act for public, religious, educational, recreational, residential, or business purposes will substantially affect the governmental interests of a municipality contiguous to the San Xavier Reservation or the Salt River Pima-Maricopa Reservation, as the case may be, he shall notify the appropriate authority of such municipality of the pendency of the proposed lease. The Secretary may, in his discretion, furnish such municipality with an outline of the major provisions of the lease which affect its governmental interests and shall consider any comments on the terms of the lease affecting the municipality or on the absence of such terms from the lease that the authorities may offer. The notice to the authorities of the municipality shall set forth a reasonable period, not to exceed 30 days, within which any such comments shall be submitted.

(e) Applicability of other regulations. The regulations in part 162 of this chapter shall apply to leases made under the 1966 Act except where such regulations are inconsistent with this section.

(f) Mission San Xavier del Bac. Nothing in the 1966 Act authorizes development that would detract from the scenic, historic, and religious values of the Mission San Xavier del Bac owned by the Franciscan Order of Friars Minor and located on the San Xavier Reservation.

### PART 166—GRAZING PERMITS

5. Part 166 is revised to read as follows:  
Sect.

#### Subpart A—Purpose, Policy, and Definitions

- 166.1 What is the purpose of this part?  
166.2 What terms do I need to know?

#### Subpart B—Permit Requirements

##### General Requirements

- 166.100 Must Indian owners of Indian land obtain a permit before using land for grazing purposes?  
166.101 Must parents or guardians of Indian minors who own Indian land

- obtaining a permit before using land for grazing purposes?
- 166.102 Who can grant a permit?
- 166.103 Who may represent an individual Indian landowner in granting a permit?
- 166.104 May an emancipated minor grant a permit?
- 166.105 What requirements apply to a permit on a fractionated tract?
- 166.106 What provisions must be contained in a permit?
- 166.107 How long is a permit term?
- 166.108 Are permits recorded?
- 166.109 Where are permits recorded?
- 166.110 Who is responsible for recording permits?
- 166.111 When may a permittee take possession of permitted Indian land?
- 166.112 Must I comply with any standards of conduct if I am granted a permit?
- 166.113 Will the BIA notify the permittee of any change in land title status?
- 166.114 When is a decision by the BIA regarding a permit effective?

#### Obtaining a Permit

- 166.115 How can I find Indian land available for grazing?
- 166.116 Who is responsible for permitting Indian land?
- 166.117 How do I acquire a permit on Indian land?
- 166.118 How do I acquire a permit through tribal allocation?
- 166.119 How do I acquire a permit through negotiation?
- 166.120 What are the basic steps for acquiring a permit through negotiation?
- 166.121 Can I negotiate a contract with an Indian landowner to permit land at a future date?
- 166.122 How do I acquire an advertised permit through competitive bidding?
- 166.123 Are there standard permit forms?

#### Permit (Leasehold) Mortgage

- 166.124 Can I use a permit as collateral for a loan?
- 166.125 What factors does the BIA consider when reviewing a leasehold mortgage?
- 166.126 May a permittee voluntarily assign a leasehold interest under an approved encumbrance?
- 166.127 May the holder of a leasehold mortgage assign the leasehold interest after a sale or foreclosure of an approved encumbrance?

#### Non-trust Interest

- 166.128 May the Secretary grant or approve a permit for non-trust interests in Indian land?
- 166.129 Are non-trust interests in Indian land included in a permit?
- 166.130 How will a permittee know there are non-trust interests in Indian land?
- 166.131 From whom must a permittee permit a non-trust interest?
- 166.132 Is the non-trust interest shown in a permit of Indian land?
- 166.133 How much rent is due for the non-trust interest?
- 166.134 May a grazing rental payment made by a permittee to the BIA or to an Indian landowner include payment for any non-trust interest?

- 166.135 Will the BIA grant or approve a permit on a fractionated tract that is subject to a life estate held by the owner of a non-trust interest?

#### Modifying a Permit

- 166.136 How can Indian land be removed from an existing permit?
- 166.137 How will the BIA provide notice if Indian land is removed from an existing permit?
- 166.138 Other than to remove land, how can a permit be amended, modified, assigned, transferred, or subpermitted?

#### Subpart C—Land and Operations Management

- 166.200 How is Indian agricultural land managed?
- 166.201 How is Indian land for grazing purposes described?
- 166.202 How is a range unit created?
- 166.203 Can more than one tract of Indian land be combined into one permit?
- 166.204 When is grazing capacity determined?
- 166.205 Will grazing capacity be increased if I graze adjacent trust or non-trust rangelands not covered by the permit?
- 166.206 What livestock can I graze on permitted Indian land?
- 166.207 What must a permittee do to protect livestock from exposure to disease?

#### Improvements

- 166.208 Can improvements be constructed on permitted Indian land?
- 166.209 What happens to improvements constructed on Indian lands when the permit has been terminated?

#### Management Plans and Environmental Compliance

- 166.210 Is an agricultural resource management plan required?
- 166.211 Is a conservation plan required?
- 166.212 Is environmental compliance required?

#### Subpart D—Tribal Policies and Laws Pertaining to Permits

- 166.300 What tribal policies will we apply to permitting on Indian agricultural lands?
- 166.301 May individual Indian landowners exempt their land from tribal policies for permitting on Indian agricultural lands?
- 166.302 Do tribal laws apply to permits?
- 166.303 What notifications are required that tribal laws apply to permits on Indian agricultural lands?
- 166.304 Who enforces tribal laws pertaining to Indian agricultural land?

#### Subpart E—Grazing Rental Rates

##### Rental Rate Determination and Adjustment

- 166.400 Who establishes grazing rental rates?
- 166.401 How does the Secretary establish grazing rental rates?
- 166.402 Why must the Secretary determine the fair annual rental of Indian land?
- 166.403 Will the Secretary ever grant or approve a permit at less than fair annual rental?

- 166.404 Whose grazing rental rate will be applicable for a permit on tribal land?
- 166.405 Whose grazing rental rate will be applicable for a permit on individually owned Indian land?
- 166.406 Whose grazing rental rate will be applicable for a permit on government land?
- 166.407 If a range unit consists of tribal and individually owned Indian lands, what is the grazing rental rate?
- 166.408 Can tribal members graze livestock that they do not own on tribal land at the grazing rental rate established for tribal members?
- 166.409 Is the grazing rental rate established by the BIA adjusted periodically?

#### Rental Payments

- 166.410 How is my grazing rental payment determined?
- 166.411 When do I pay grazing rental payments?
- 166.412 When is a grazing rental payment late?
- 166.413 Will a permittee be notified when a grazing rental payment is due?
- 166.414 If a permittee does not receive notice that a grazing rental payment is due must the scheduled payment still be made?
- 166.415 What will the BIA do to collect grazing rental payments that are not made in accordance with the terms of a permit?
- 166.416 Will I have to pay a penalty for late grazing rental payments?
- 166.417 What forms of grazing rental payments are acceptable?
- 166.418 To whom are grazing rental payments made?
- 166.419 May a permittee send a grazing rental payment directly to the Indian landowner?
- 166.420 Does the BIA accept partial payment for a grazing rental payment due?
- 166.421 May a permittee make a grazing rental payment in advance of the due date?
- 166.422 May an individual Indian landowner modify the terms of the permit on a fractionated tract for advance grazing rental payment?

#### Compensation to Indian Landowners

- 166.423 What does the BIA do with grazing rental payments received from permittees?
- 166.424 How do Indian landowners receive grazing rental payments that the BIA has received from permittees?
- 166.425 How will the rent be distributed if the permit covers more than one tract of land with different owners?

#### Subpart F—Administrative and Tribal Fees

- 166.500 Are there administrative fees for a permit?
- 166.501 How are administrative fees determined?
- 166.502 Are administrative fees refundable?
- 166.503 May the Secretary waive administrative fees?

166.504 Are there any other administrative or tribal fees, taxes, or assessments that must be paid?

#### Subpart G—Bonding and Insurance Requirements

- 166.600 Must a permittee provide a bond for a permit?  
 166.601 How is the amount of the bond determined?  
 166.602 What form of bonds will the BIA accept?  
 166.603 If cash is submitted as a bond, how is it administered?  
 166.604 Is interest paid on a cash performance bond?  
 166.605 Are cash performance bonds refunded?  
 166.606 Is insurance required for a permit?  
 166.607 What types of insurance may be required?

#### Subpart H—Permit Violations

- 166.700 What permit violations are addressed by this subpart?  
 166.701 How will the Secretary enforce compliance with permit provisions?  
 166.702 What happens if a violation of a permit occurs?  
 166.703 What will a written notice of a violation contain?  
 166.704 Can a determination of violation be contested?  
 166.705 What happens to a bond if a violation occurs?  
 166.706 What happens if a permit violation is not cured?  
 166.707 If a violation is not cured, what may an Indian landowner do?  
 166.708 Can the Secretary take emergency action without prior notice if the permitted premises are being damaged?  
 166.709 What rights does a permittee have if the Secretary takes emergency action under this subpart?

#### Subpart I—Trespass

- 166.800 What is trespass?  
 166.801 What is the BIA's trespass policy?  
 166.802 Who can enforce this subpart?

#### Notification

- 166.803 How are trespassers notified of a trespass determination?  
 166.804 What can I do if I receive a trespass notice?  
 166.805 Who else will the BIA notify?

#### Actions

- 166.806 What actions does the BIA take against trespassers?  
 166.807 When will we impound unauthorized livestock or other property?  
 166.808 How are trespassers notified if their unauthorized livestock or other property are to be impounded?  
 166.809 What happens after my unauthorized livestock or other property are impounded?  
 166.810 How do I redeem my impounded livestock or other property?  
 166.811 How will the sale of impounded livestock or other property be conducted?

#### Penalties, Damages, and Costs

- 166.812 What are the penalties, damages, and costs payable by trespassers on Indian agricultural land?  
 166.813 How will the BIA determine the value of forage or crops consumed or destroyed?  
 166.814 How will the BIA determine the value of the property illegally used or removed?  
 166.815 How will the BIA determine the amount of damages to Indian agricultural land?  
 166.816 How will the BIA determine the costs associated with enforcement of the trespass?  
 166.817 What happens if I do not pay the assessed penalties, damages and costs?  
 166.818 How are the proceeds from trespass distributed?  
 166.819 What happens if the BIA does not collect enough money to satisfy the penalty?

#### Subpart J—Appeals

- 166.900 Can decisions by the BIA be appealed?

#### Subpart K—Records

- 166.1000 Who owns records associated with this part?

#### Subpart L—Agriculture Education, Education Assistance, Recruitment, and Training

- 166.1100 How are the Indian agriculture education programs operated?  
 166.1101 How will the BIA select an agriculture intern?  
 166.1102 How can I become an agriculture educational employment student?  
 166.1103 How can I get an agriculture scholarship?  
 166.1104 What is agriculture education outreach?  
 166.1105 Who can get assistance for postgraduate studies?  
 166.1106 What can happen if we recruit you after graduation?  
 166.1107 Who can be an intern?  
 166.1108 Who can participate in continuing education and training?  
 166.1109 What are my obligations to the BIA after I participate in an agriculture education program?  
 166.1110 What happens if I do not fulfill my obligation to the BIA?

**Authority:** 5 U.S.C. 301; R.S. 463, 25 U.S.C. 2; R.S. 465, 25 U.S.C. 9; Sec. 6, 96 Stat. 986, 25 U.S.C. 466. Interpret or apply R.S. 2078, 25 U.S.C. 68; R.S. 2117, 25 U.S.C. 179; Sec. 3, 26 Stat. 795, 25 U.S.C. 397; Sec. 1, 28 Stat. 305, 25 U.S.C. 402; Sec. 4, 36 Stat. 856, 25 U.S.C. 403; Sec. 1, 39 Stat. 128, 25 U.S.C. 394; Sec. 1, 41 Stat. 1232, 25 U.S.C. 393; Secs. 16, 17, 48 Stat. 987, 988, 25 U.S.C. 476, 477; Secs. 1, 2, 4, 5, 6, 69 Stat. 539, 540, 25 U.S.C. 415, 415a, 415b, 415c, 415d, 25 U.S.C. 3701, 3702, 3703, 3711, 3712, 3713, 3714, 3731, 3732, 3733, 3734, 3741, 3742, 3743, 3744, 3745, 107 Stat. 2011.

#### Subpart A—Purpose, Policy, and Definitions

##### § 166.1 What is the purpose of this part?

(a) The purpose of this part is to describe the authorities, policies, and procedures the Secretary uses to approve, grant, and administer a permit for grazing on tribal land, individually owned Indian land, or government land.  
 (b) If the Secretary's approval is not required for a permit, these regulations will not apply.  
 (c) Nothing contained in the permit will operate to delay or prevent a termination of the Secretary's trust responsibility with respect to the Indian land by the issuance of a fee patent or otherwise during the term of the permit.

**§ 166.2 What terms do I need to know?**  
*Adult* means an individual Indian who is 18 years of age or older.  
*Agency* means the agency or field office or any other designated office in the Bureau of Indian Affairs (BIA) having jurisdiction over trust or restricted property or money.  
*Agricultural product* means:  
 (1) Crops grown under cultivated conditions whether used for personal consumption, subsistence, or sold for commercial benefit;  
 (2) Domestic livestock, including cattle, sheep, goats, horses, buffalo, swine, reindeer, fowl, or other animals specifically raised and used for food or fiber or as a beast of burden;  
 (3) Forage, hay, fodder, food grains, crop residues and other items grown or harvested for the feeding and care of livestock, sold for commercial profit, or used for other purposes; and  
 (4) Other marketable or traditionally used materials authorized for removal from Indian agricultural lands.  
*Agricultural resource management plan* means a ten year plan developed through the public review process specifying the tribal management goals and objectives developed for tribal agricultural and grazing resources. Plans developed and approved under AIARMA will govern the management and administration of Indian agricultural resources and Indian agricultural lands by the Secretary and Indian tribal governments.  
*AIARMA* means American Indian Agricultural Resources Management Act of December 3, 1993 (107 Stat. 2011, 25 U.S.C. 3701 *et seq.*), and amended on November 2, 1994 (108 Stat. 4572).  
*Appeal bond* means a type of bond that guarantees payment of an amount owed after the completion of an appeal process.  
*Approving/approval* means the action taken by the BIA to approve a permit.

*Assign* means to transfer the contract rights in a permit for use of Indian land to an individual, company, corporation or partnership in exchange for compensation or other consideration.

*Assignee* means the person to whom the contract rights for use of Indian land were assigned.

*Allocation* means the apportionment of grazing privileges without competition to tribal members or tribal entities, including the tribal designation of permittees and the number and kind of livestock to be grazed.

*Animal Unit Month (AUM)* means the amount of forage required to sustain one cow or one cow with one calf for one month.

*Bond* means an agreement in writing in which a surety, or an obligor for a personal bond, guarantees performance or compliance with the permit terms.

*BIA* means the Bureau of Indian Affairs within the Department of the Interior.

*Conservation plan* means a statement of management objectives for grazing, including contract stipulations defining required uses, operations, and improvements. A conservation plan will be developed with the permittee and reviewed by us on an annual basis.

*Day* means a calendar day unless otherwise specified.

*Encumbrance* means mortgage, deed of trust or other instrument which secures a debt owed by a permittee to a lender or other holder of a leasehold mortgage on the permit interest.

*Fair annual rental* means a reasonable annual return on fair market value, as this value may be determined by appraisal, advertisement, competitive bidding, negotiation, or any other appropriate method in accordance with Uniform Standards of Professional Appraisal Practices (USPAP).

*Farmland* means Indian land, excluding Indian forest land, that is used for production of food, feed, fiber, forage, and seed, oil crops, or other agricultural products, and may be either dry land, irrigated land, or irrigated pasture.

*Fractionated tract* means a parcel of Indian land with more than one owner.

*Government land* means the surface estate of a tract of land, or any interest therein, which is acquired or reserved by the United States for the Bureau of Indian Affairs administrative purposes. Indian land is not government land.

*Grant/granting* means the process of agreeing or consenting to a permit.

*Grazing capacity* means the maximum sustainable number of livestock that may be grazed on a defined area and within a defined period, usually

expressed in Animal Unit Month (AUM).

*Grazing rental payment* means the total of the grazing rental rate multiplied by the number of AUMs or acres in the permit.

*Grazing rental rate* means the amount you must pay for an AUM or acre based on the fair annual rental.

*I/You* means the person to whom these regulations directly apply.

*Immediate family* means the spouse, brothers, sisters, lineal ancestor, or lineal descendant of Indian blood.

*In loco parentis* means the person whom the BIA recognizes as standing in place of a parent.

*Indian agricultural land* means Indian land, including farmland and rangeland, excluding Indian forest land (except where authorized grazing occurs) that is used for production of agricultural products, and Indian lands occupied by industries that support the agricultural community, regardless of whether a formal inspection and land classification has been conducted.

*Indian land* means: (1) The surface estate (non-mineral) of a tract of land, or any interest therein, which is held by the United States in trust for a tribe or an individual Indian; or (2) A tract of land, or any interest therein, which is owned by a tribe or an individual Indian subject to federal restrictions against alienation or encumbrance.

*Indian landowner* means an Indian tribe or individual Indian who owns an interest in Indian land.

*Individually owned Indian land* means Indian land or an interest therein owned by an individual Indian.

*Integrated resource management plan* means the plan developed pursuant to the process used by tribal governments to assess available resources and to provide identified holistic management objectives that include quality of life, production goals, and landscape description of all designated resources that may include (but not limited to) water, fish, wildlife, forestry, agriculture, minerals, and recreation, as well as cultural, community, and municipal resources, and may include any previously adopted tribal codes and plans related to such resources.

*Irrevocable letter of credit* means an arrangement, with specified conditions, including the incapability of being recalled or revoked, whereby a bank agrees to substitute its credit for a customer's.

*Majority interest* means the total amount of tribal and/or Indian land ownership interest that is more than 50 percent of the entire ownership in the land.

*Irrevocable letter of credit* means an arrangement, with specified conditions, including the incapability of being recalled or revoked, whereby a bank agrees to substitute its credit for a customer's.

*Majority interest* means the total amount of tribal and/or Indian land ownership interest that is more than 50 percent of the entire ownership in the land.

*Minor* means an individual who is not 18 years of age or older.

*Negotiable treasury securities* means securities issued by the Treasury Department of the United States.

*Non compos mentis* means an individual who has been found by a court of competent jurisdiction, based on established criteria that include a medical or psychological evaluation, to be of unsound mind or incapable of transacting or conducting business and managing his or her own affairs.

*Non-trust interest* means an undivided interest in Indian land that is owned in fee simple, rather than in trust or restricted status.

*Permit* means a contract which grants the right to possess, use, and enjoy Indian land for grazing purpose and duration in exchange for compensation or other consideration, but which can be revoked.

*Permittee* means an individual, company, corporation, or partnership, who has entered into a permit for grazing on tribal, individually owned Indian, and/or government lands in exchange for compensation.

*Range unit* means rangelands consolidated to form a unit of land for the management and administration of grazing under a permit. A range unit may consist of a combination of tribal, individually owned Indian, and/or government land.

*Rangeland* means Indian land, excluding Indian forest land, on which native vegetation is predominantly grasses, grass-like plants, half-shrubs or shrubs suitable for grazing or browsing use, and includes lands re-vegetated naturally or artificially to provide a forage cover that is managed as native vegetation.

*Restricted land* means land for which a tribe or individual Indian holds fee simple title subject to limitations or restriction against alienation or encumbrance as set forth in the title or by operation of law or both.

*Secretary* means the Secretary of the Interior or an authorized representative; it also means a tribe or tribal organization if that entity is administering specific programs, functions services or activities, previously administered by the

Secretary of the Interior, but now authorized under a Self-Determination Act contract (pursuant to 25 U.S.C. 450f) or a Self-Governance compact (pursuant to 25 U.S.C. 558cc). Such tribal authority does not include inherently federal functions.

*Subpermit* means a permit granted by a permittee of all or part of the permitted property for a period up to the expiration date of the initial permit.

*Surety* means one who guarantees the performance, default or debt of another.

*Sustained yield* means the yield of agricultural products that a unit of land can produce continuously at a given level of use.

*Trespass* means any unauthorized occupancy, use of, or action on Indian agricultural lands.

*Tribal land* means land for which the United States holds fee title in trust for the benefit of a tribe, and includes assignments of tribal land.

*Tribal law* means the body of non-federal law that governs tribal lands and activities, and includes ordinances or other enactments by a tribe, tribal constitutions, tribal court rulings and tribal common law.

*Trust land* means land, or an interest therein, for which the United States holds fee title in trust for the benefit of a tribe or an individual Indian.

*Undivided interest* means that the interest of co-owners is in the entire property and that such interest is indistinguishable. The interest has not been divided out from the whole parcel. (Example: If you own  $\frac{1}{4}$  interest in 160 acres, you do not own an identifiable 40 acre tract. You own  $\frac{1}{4}$  of the whole 160 acres because your  $\frac{1}{4}$  interest has not been divided out from the whole 160 acres.)

*Us/We/Our* means the Secretary as defined in this section.

*Uniform Standards of Professional Appraisal Practices (USPAP)* means the standards promulgated by the Appraisal Institute which establish requirements and procedures for professional real property appraisal practice.

*Written notice* means actual written letter mailed by way of United States mail, certified return receipt requested, postage prepaid, or hand delivered letter.

## Subpart B—Permit Requirements

### General Requirements

#### § 166.100 Must Indian owners of Indian land obtain a permit before using land for grazing purposes?

(a) Indian landowners who own 100 percent (%) of a tract of land are not required to obtain a permit.

(b) If an Indian landowner does not own 100 percent (%) of a tract of land and wants to use the land for grazing purposes, a permit must be obtained from the co-owners of the tract of land.

#### § 166.101 Must parents or guardians of Indian minors who own Indian land obtain a permit before using land for grazing purposes?

Parents, guardians, or other persons standing *in loco parentis* need not obtain a permit for Indian lands owned by their minor Indian children if:

(a) Those minor children own 100 percent (%) of the land; and

(b) The minor children directly benefit from the use. We may require the user to provide evidence of a direct benefit to the minor children. When one of the minor children becomes an adult, a permit must be obtained from the former minor child for the use to continue.

#### § 166.102 Who can grant a permit?

(a) Tribes grant permits of tribal land, including any tribally-owned undivided interest(s) in a fractionated tract. A permit granted by the tribe must be approved by us, unless the permit is authorized by a charter approved by us under 25 U.S.C. 477, or unless our approval is not required under other applicable federal law. In order to permit tribal land in which the beneficial interest has been assigned to another party, the assignee and the tribe must both grant the permit, subject to our approval.

(b) Individual Indian landowners may grant a permit of their own land, including their undivided interest in a fractionated tract, subject to our approval. Except as otherwise provided in this part, these landowners may include the owner of a life estate holding 100 percent (%) interest in the permit tract.

(c) We may grant a permit on behalf of:

(1) An individual Indian landowner as provided in § 166.103; and

(2) Tribes that give us written authority to grant permits on their behalf.

(d) We will grant permits on Government lands.

#### § 166.103 Who may represent an individual Indian landowner in granting a permit?

The following individuals or entities may represent an individual Indian landowner in granting a permit:

(a) An adult acting on behalf of:

(1) His or her minor children; or  
(2) Other minor children to whom the adult stands *in loco parentis* who do not have a guardian or other legal representative;

(b) A guardian, conservator, or other fiduciary appointed by a court of competent jurisdiction to act on behalf of an individual Indian landowner;

(c) An adult or legal entity who has been given a written power of attorney that:

(1) Meets all of the formal requirements of any applicable tribal or state law;

(2) Identifies the attorney-in-fact and the land to be permitted; and

(3) Describes the scope of the power granted and any limits thereon.

(d) The BIA acting on behalf of:

(1) An individual who is non compos mentis;

(2) An orphaned minor;

(3) An individual Indian landowner who has granted us written authority to permit his or her land;

(4) The undetermined heirs and devisees of a deceased Indian landowner;

(5) An Indian landowner whose whereabouts are unknown to us after a reasonable attempt is made to locate the owner;

(6) The Indian landowners of a fractionated tract who:

(i) Have received actual notice of our intent to grant a permit on their behalf; and

(ii) Are unable to agree upon a permit during the three month negotiation period following the notice;

(7) The owners of a minority interest in the Indian ownership of a fractionated tract of Indian agricultural land when the majority interest has consented, as long as the minority interest owners receive fair annual rental;

(8) The owners of "highly fractionated undivided heirship lands," for agricultural permits, under 166.300; or

(9) The individual Indian owners of fractionated Indian land, when necessary to protect the interests of the individual Indian landowners.

#### § 166.104 May an emancipated minor grant a permit?

No. An emancipated minor, a person who is under 18 years of age and declared by a court of competent jurisdiction to be an adult for certain purposes, may not grant a permit.

#### § 166.105 What requirements apply to a permit on a fractionated tract?

(a) The owners of a majority interest in the Indian ownership of a fractionated tract may grant a permit without giving prior notice to the minority owners as long as the minority interest owners receive fair annual rental. We must approve the permit.

(b) We may grant a permit on behalf of all owners of a fractionated tract as

long as the owners receive fair annual rental. Before granting such a permit, we may offer a preference right to any Indian owner who:

- (1) Possesses the entire tract;
- (2) Submits a written offer to permit the land, subject to any required or negotiated terms and conditions, prior to our granting a permit to another party; and
- (3) Provides any supporting documents needed to demonstrate the ability to perform all of the permittee's obligations under the proposed permit.

**§ 166.106 What provisions must be contained in a permit?**

A permit, at a minimum, must include:

- (a) Authorized use(s);
- (b) Prohibited use(s);
- (c) Prohibition against creating a nuisance, any illegal activity, and negligent use or waste or resources;
- (d) Numbers and types of livestock allowed;
- (e) Season(s) of use;
- (f) Grazing rental rate;
- (g) Administrative fees;
- (h) Tribal fees, if applicable;
- (i) Payment methodology;
- (j) Location of range unit;
- (k) Animal identification requirements;

- (l) A description (preferably a legal description) of the permitted area;
- (m) Term of permit;
- (n) Conditions for making improvements, if any; and
- (o) A right of entry by the Secretary for purposes of inspection or enforcement purposes.

**§ 166.107 How long is a permit term?**

- (a) The duration must be reasonable given the purpose of the permit and the level of investment required by the permittee to place the property into productive use.
- (b) We will not grant or approve a permit more than 12 months before its beginning date.
- (c) On behalf of the undetermined heirs of an individual Indian decedent owning 100 percent (%) interest in the land, we will grant or approve permits for a maximum term of two years.
- (d) Permits granted for agricultural purposes will not usually exceed ten years. A term longer than ten years, but not to exceed 25 years unless authorized by other federal law, may be authorized when a longer term is determined by us to be in the best interest of the Indian landowners and when such permit requires substantial investment in the development of the lands by the permittee.
- (e) A tribe may determine the duration of permits composed entirely

of its tribal land or in combination with government land, subject to the same limitations provided in paragraph (d) of this section.

(f) A permit may be extended only by renewal or extension as defined in the permit. Permits may provide multiple options for termination.

(g) A permit will specify the beginning and ending dates of the term allowed, as well as any option to renew, extend, or terminate.

**§ 166.108 Are permits recorded?**

All permits on Indian land in excess of one year must be recorded.

**§ 166.109 Where are permits recorded?**

Permits are recorded in the appropriate BIA Land Titles and Records Office.

**§ 166.110 Who is responsible for recording permits?**

We are responsible for ensuring that all permits we approve or grant are recorded in the Land Titles and Records Office. Tribes must record those permits not requiring our approval.

**§ 166.111 When may a permittee take possession of permitted Indian land?**

The permittee may take possession of permitted Indian land on the date specified in the permit as the beginning date of the term, but not before we approve the permit.

**§ 166.112 Must I comply with any standards of conduct if I am granted a permit?**

Yes. Permittees are expected to:

- (a) Conduct grazing operations in accordance with the principles of sustained yield management, agricultural resource management planning, sound conservation practices, and other community goals as expressed in tribal laws, agricultural resource management plans, and similar sources.
- (b) Comply with all applicable laws, ordinances, rules, regulations, and other legal requirements. You must also pay all applicable penalties if you do not comply.
- (c) Fulfill all financial obligations of your permit owed to the Indian landowners and the United States.
- (d) Conduct only those activities authorized by the permit.

**§ 166.113 Will the BIA notify the permittee of any change in land title status?**

Yes. We will notify the permittee if a fee patent is issued or if restrictions are removed, but the permit continues in effect for its term. After we notify the permittee our obligation under 166.303 and this section ceases.

**§ 166.114 When is a decision by the BIA regarding a permit effective?**

A decision by the BIA regarding a permit is effective 30 days after the issuance of the decision document and exhaustion of all appeal rights.

**Obtaining a Permit**

**§ 166.115 How can I find Indian land available for grazing?**

You may contact a local BIA office or tribal office to determine what Indian land may be available for grazing permits.

**§ 166.116 Who is responsible for permitting Indian land?**

The Indian landowner is primarily responsible for permitting Indian land, with the assistance and approval of the Secretary except where otherwise provided by law. You may contact the local BIA or tribal office for assistance in obtaining a permit for grazing purposes on Indian land.

**§ 166.117 How do I acquire a permit on Indian land?**

(a) A tribe may permit tribal land through tribal allocation, negotiation, or advertisement. We must approve all permits of Indian land in order for the permit to be valid.

(b) We will grant permits through negotiation or advertisement for range units containing, in whole or part, individually owned Indian land and range units that consist of, or in combination with individually owned Indian land, tribal or government land, under § 166.102. We will consult with tribes prior to granting permits for range units that include tribal land.

**§ 166.118 How do I acquire a permit through tribal allocation?**

(a) A tribe may allocate grazing privileges on range units containing trust or restricted land which is entirely tribally owned or which contains only tribal and government land under the control of the tribe.

(b) A tribe may allocate grazing privileges to its members and to tribally authorized Indian entities without competitive bidding on tribal and tribally controlled government land.

(c) We may implement the tribe's allocation procedure by authorizing the grazing privileges on individually owned Indian land.

(d) A tribe may prescribe the eligibility requirements for allocations 60 days before granting a new permit or before an existing permit expires. The eligibility requirements are subject to our written agreement.

(e) 120 days before the expiration of existing permits, we will notify the tribe

of the 60 day period during which the tribe may prescribe eligibility requirements.

(f) We will prescribe the eligibility requirements after the expiration of the 60 day period in the event satisfactory action is not taken by the tribe.

(g) Other than for tribal members, grazing rental rates for grazing privileges allocated from an existing permit, in whole or in part, must equal or exceed the rates paid by the preceding permittee(s) unless market conditions dictate a lower price. Tribal members will pay grazing rental rates established by the tribe.

**§ 166.119 How do I acquire a permit through negotiation?**

(a) Permits may be negotiated and granted by the Indian landowners with the permittee of their choice. The Secretary also may negotiate and grant permits on behalf of Indian landowners pursuant to § 166.102 of this part.

(b) Upon the conclusion of negotiations with the Indian landowners or their representatives, and the satisfaction of any applicable conditions, you may submit an executed permit and any required supporting documents to us for appropriate action.

(c) In negotiating a permit, the Indian owners may choose to contribute their land in exchange for their receipt of a share of the revenues or profits generated by the permit. Under such an arrangement, the permit may be granted to a joint venture or other legal entity owned, in part, by the Indian owners of the land. Unless otherwise required by this title, we will not enter into or approve any agreements related to the formation of such a joint venture or other legal entity.

(d) Receipt of permit payments based upon income received from the land will not, of itself, make the Indian landowner a partner, joint venturer, or associate of the permittee(s).

(e) We will assist prospective permittees in contacting the Indian landowners or their representatives, for the purpose of negotiating a permit.

**§ 166.120 What are the basic steps for acquiring a permit through negotiation?**

The basic steps for acquiring a permit by negotiation are as follows:

(a) We receive a request to permit from an Indian landowner or potential permittee;

(b) We prepare the permit documents and provide them to the Indian landowner or potential permittee, or assist the Indian landowner to prepare the documents;

(c) The Indian landowner, or the Secretary on the Indian landowner's behalf, grants (agrees to) a permit;

(d) A potential permittee completes the requirements for securing a permit, *e.g.*, bond, payment of administrative fee, *etc.*;

(e) We review the permit for proper completion and compliance with all applicable laws and regulations;

(f) We issue a decision on the permit based upon our review;

(g) We send the approved permit to the permittee and, upon request, to the Indian landowner; and

(h) We record and maintain the approved permit.

**§ 166.121 Can I negotiate a contract with an Indian landowner to permit land at a future date?**

In negotiating a permit with Indian landowners or their representatives, a prospective permittee may enter into a contract to permit the land at a future date, with the contract specifying the essential permit terms, as described in § 166.107 of this part, as well as any conditions that must be satisfied before the permit may be granted or approved.

(a) The conditions to be satisfied may require that the permittee prepare environmental documents that comply with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) or other preliminary federal or tribal land use requirements; the conditions also may require that certain permits or financing commitments be obtained before the permit is granted or approved.

(b) We may participate in the contract negotiations (in order to ensure that all of the necessary terms and conditions are identified), but we will not be a party to such a contract.

(c) We will not approve such a contract unless approval is required under 25 U.S.C. 81 and part 84 of this chapter.

**§ 166.122 How do I acquire an advertised permit through competitive bidding?**

Advertised permits on Indian lands are awarded to the successful bidder after a public bidding process. We will grant or approve the permit on behalf of the Indian landowners. The basic steps for acquiring an advertised permit are as follows:

(a) We prepare and distribute an advertisement of lands available for permit that identifies the terms and conditions of the permit sale, including, for agricultural permits, any preference rights;

(b) We solicit sealed bids and conduct the public permit sale;

(c) We determine and accept the highest bid(s), which may require further competitive bidding after the bid opening;

(d) We prepare permits for successful bidders;

(e) The successful bidder completes and submits the permit and satisfies requirements, *e.g.*, bond, payment of administrative fee, *etc.*;

(f) We review the permit for proper completion and compliance with all applicable laws and regulations;

(g) We grant the permit on behalf of Indian landowners where we are authorized to do so by law;

(h) We approve the permit;

(i) We distribute the approved permit to successful bidder/permittee and, upon request, to the Indian landowner; and

(j) We record and maintain the approved permit.

**§ 166.123 Are there standard permit forms?**

Yes. Standard permit forms, including bid forms, permit forms, and permit modification forms are available at our agency offices.

**Permit (Leasehold) Mortgage**

**§ 166.124 Can I use a permit as collateral for a loan?**

We may approve a permit containing a provision that authorizes the permittee to encumber the permit interest, known as a leasehold mortgage, for the development and improvement of the permitted Indian land. We must approve the leasehold mortgage that encumbers the leasehold mortgage before it can be effective. We will record the approved leasehold mortgage instrument.

**§ 166.125 What factors does the BIA consider when reviewing a leasehold mortgage?**

(a) We will approve the leasehold mortgage if:

(1) All consents required in the permit have been obtained from the Indian landowners and any surety or guarantor;

(2) The mortgage covers only the interest in the permitted premises, and no unrelated collateral belonging to the permittee;

(3) The financing being obtained will be used only in connection with the development or use of the permitted premises, and the mortgage does not secure any unrelated obligations owed by the permittee to the mortgagee; and

(4) We find no compelling reason to withhold our approval, in order to protect the best interests of the Indian landowner.

(b) In making the finding required by paragraph (a)(4) of this section, we will consider whether:

(1) The ability to perform the permit obligations would be adversely affected by the cumulative mortgage obligations;

(2) Any negotiated permit provisions as to the allocation or control of insurance or condemnation proceeds would be modified;

(3) The remedies available to us or the Indian landowners would be limited (beyond the additional notice and cure rights to be afforded to the mortgagee), if the permittee defaults on the permit;

(4) Any rights of the Indian landowners would be subordinated or adversely affected in the event of a foreclosure, assignment in lieu of foreclosure, or issuance of a "new permit" to the mortgagee.

(c) We will notify the Indian landowners of our approval of the leasehold mortgage.

**§ 166.126 May a permittee voluntarily assign a leasehold interest under an approved encumbrance?**

With our approval, under an approved encumbrance, a permittee voluntarily may assign the leasehold interest to someone other than the holder of a leasehold mortgage if the assignee agrees in writing to be bound by the terms of the permit. A permit may provide the Indian landowners with a right of first refusal on the conveyance of the leasehold interest.

**§ 166.127 May the holder of a leasehold mortgage assign the leasehold interest after a sale or foreclosure of an approved encumbrance?**

Yes. The holder of a leasehold mortgage may assign a leasehold interest obtained by a sale or foreclosure of an approved encumbrance without our approval if the assignee agrees in writing to be bound by the terms of the permit. A permit may provide the Indian landowners with a right of first refusal on the conveyance of the permit interest (leasehold).

**Non-Trust Interest**

**§ 166.128 May the Secretary grant or approve a permit for non-trust interests in Indian land?**

No. The Secretary has no statutory authority to grant or approve a permit for non-trust interests in Indian land.

**§ 166.129 Are non-trust interests in Indian land included in a permit?**

No. The undivided non-trust interests are not included in a permit granted or approved by the BIA.

**§ 166.130 How will a permittee know there are non-trust interests in Indian land?**

When we permit Indian land, we will advise the permittee whether the title to the Indian land contains non-trust interests. Upon request, and subject to applicable law, we will provide the permittee with the information we have

in our records identifying the owner(s) of the non-trust interest.

**§ 166.131 From whom must a permittee permit a non-trust interest?**

A permittee must obtain a permit on any non-trust interest(s) directly from owner(s) of the non-trust interest(s).

**§ 166.132 Is the non-trust interest shown in a permit of Indian land?**

No. The permit will describe only the Indian owned interests. For example, if the Indian owned interests constitutes  $\frac{3}{4}$  of the Indian land, the land will be described as: An undivided  $\frac{3}{4}$  interest in and to the W/2 SW/4, Section 1, Township 10 North, Range 1 East, Principal Meridian, Billings, Montana. This will notify the permittee that the full interest in the tract has not been permitted. The remaining undivided  $\frac{1}{4}$  interest is the non-trust interest and the permittee must contact the non-trust interest owners directly to secure a permit of their interest.

**§ 166.133 How much rent is due for the non-trust interest?**

It is the responsibility of the permittee to contact the non-trust owners to negotiate the amount of rental to be paid and to make rental payments to the owners of the non-trust interest.

**§ 166.134 May a grazing rental payment made by a permittee to the BIA or to an Indian landowner include payment for any non-trust interest?**

No. Payment for a non-trust interest must be made to the owner of that interest.

**§ 166.135 Will the BIA grant or approve a permit on a fractionated tract that is subject to a life estate held by the owner of a non-trust interest?**

We will grant or approve a permit on a fractionated tract that is subject to a life estate held by the owner of a non-trust interest only when it is necessary to preserve the value of the trust interest in the land.

**Modifying a Permit**

**§ 166.136 How can Indian land be removed from an existing permit?**

(a) We will remove Indian land from your permit if:

(1) The trust status of the Indian land terminates;

(2) The Indian landowners request removal, and we determine that the removal is beneficial to such interests;

(3) A tribe allocates grazing privileges for Indian land covered by your permit under § 166.117;

(4) The permittee requests removal and we determine that the removal is warranted; or

(5) We determine that removal is appropriate.

(b) We will revise the grazing capacity to reflect the removal of Indian land and show it on the permit.

**§ 166.137 How will the BIA provide notice if Indian land is removed from an existing permit?**

If the reason for removal is:

(a) *Termination of trust status.* We will notify the parties to the permit in writing within 30 days. The removal will be effective on the next anniversary date of the permit.

(b) *A request from Indian landowners or the permittee, or our determination.* We will notify the parties to the permit in writing within 30 days of such request. The removal will be effective immediately if all sureties, Indian landowners, and permittee agree. Otherwise, the removal will be effective upon the next anniversary date of the permit. If our written notice is within 180 days of the anniversary date of the permit, the removal of Indian land will be effective 180 days after the written notice.

(c) *Tribal allocation under § 166.117.* We will notify the parties to the permit in writing within 180 days of such action. The removal of tribal land will be effective on the next anniversary date of the permit. If our written notice is within 180 days of the anniversary date of the permit, the removal of Indian land will be effective 180 days after the written notice.

(d) *Request by the permittee.* We will notify the Indian landowner in writing within 30 days of such request.

**§ 166.138 Other than to remove land, how can a permit be amended, modified, assigned, transferred, or subpermitted?**

(a) We must approve an amendment, modification, assignment, transfer, or subpermit with the written consent of all parties to the permit and the sureties.

(b) Indian landowners may designate in writing one or more of their co-owners or representatives to negotiate and/or agree to amendments on their behalf.

(1) The designated landowner or representative may:

(i) Negotiate or agree to amendments; and

(ii) Consent to or approve other items as necessary.

(2) The designated landowner or representative may not:

(i) Negotiate or agree to amendments that reduce the grazing rental payments payable to the other Indian landowners; or

(ii) Terminate the permit or modify the term of the permit.

(c) We may approve a permit for tribal land to individual members of a tribe which contains a provision permitting the assignment of the permit by the permittee or the lender without our approval when:

(1) A lending institution or an agency of the United States:

(i) Accepts the interest in the permit (leasehold) as security for the loan; and  
(ii) Obtains the interest in the permit (leasehold) through foreclosure or otherwise.

(d) We may approve a permit containing a provision which authorizes the permittee to subpermit the Indian land in whole or in part without further approval. Subpermits made under this provision do not relieve the original permittee (permittee of record) from any liability under the permit, nor will it diminish our authority.

(e) We will revise the grazing capacity and show it on your permit.

### Subpart C—Land and Operations Management

#### § 166.200 How is Indian agricultural land managed?

Tribes, individual Indian landowners, and the BIA will manage Indian agricultural land either directly or through contracts, compacts, cooperative agreements, or grants under the Indian Self-Determination and Education Assistance Act (Pub. L. 93-638, as amended).

#### § 166.201 How is Indian land for grazing purposes described?

Indian land for grazing purposes should be described by aliquot parts, metes and bounds, or other acceptable description.

#### § 166.202 How is a range unit created?

We create a range unit after we consult with the Indian landowners of rangeland, by designating units of compatible size, availability, and location. Range units can be modified under §§ 166.136 through 166.138. A permit may cover more than one range unit.

#### § 166.203 Can more than one tract of Indian land be combined into one permit?

Yes. A permit may include more than one tract of Indian land. Permits may include tribal land, individually owned Indian land, or government land, or any combination thereof.

#### § 166.204 When is grazing capacity determined?

Before we grant, modify, or approve a permit, in consultation with the Indian landowners, we will establish the grazing capacity for each range unit and

the season(s) of use on Indian lands. In consultation with the Indian landowners, we will review the grazing capacity on a continuing basis using the best evaluation method(s) relevant to the ecological region.

#### § 166.205 Will grazing capacity be increased if I graze adjacent trust or non-trust rangelands not covered by the permit?

No. You will not receive an increase in grazing capacity if you graze trust or non-trust rangeland in common with the permitted land. Grazing capacity will be established only for tracts of land covered by your permit

#### § 166.206 What livestock can I graze on permitted Indian land?

(a) Tribes may determine the class of livestock that may be grazed on range units composed entirely of tribal land or which include government land, subject to the grazing capacity prescribed by us under § 166.204.

(b) For permits on range units containing, in whole or part, individually owned Indian land, we will adopt the tribal determination in paragraph (a) of this section if it is consistent with the grazing capacity determination under § 166.204.

#### § 166.207 What must a permittee do to protect livestock from exposure to disease?

Permittees must:

(a) Vaccinate livestock in accordance with applicable law.

(b) Treat all livestock exposed to or infected with contagious or infectious diseases in accordance with applicable law.

(c) Restrict the movement of exposed or infected livestock in accordance with applicable law.

#### Improvements

#### § 166.208 Can improvements be constructed on permitted Indian land?

Improvements may be constructed on permitted Indian land if the permit contains a provision allowing improvements.

#### § 166.209 What happens to improvements constructed on Indian lands when the permit has been terminated?

(a) If improvements are to be constructed on Indian land, the permit must contain a provision that improvements will either:

(1) Remain on the land upon termination of the permit, in a condition that is in compliance with applicable building, health and other codes, to become the property of the Indian landowner; or

(2) Be removed and the land restored within a time period specified in the permit. The land must be restored as

close as possible to the original condition prior to construction of such improvements. At the request of the permittee we may, at our discretion, grant an extension of time for the removal of improvements and restoration of the land for circumstances beyond the control of the permittee.

(b) If the permittee fails to remove improvements within the time allowed in the permit, the permittee may forfeit the right to remove the improvements and the improvements may become the property of the Indian landowner.

### Management Plans and Environmental Compliance

#### § 166.210 Is an agricultural resource management plan required?

An agricultural resource management plan must be developed either by the tribe or by us in consultation with the affected tribe. This plan should be consistent with the tribe's integrated resource management plan. The agricultural resource management plan must:

(a) Determine available agricultural resources;

(b) Identify specific tribal agricultural resource goals and objectives;

(c) Establish management objectives for the resources;

(d) Define critical values of the tribe and its members and provide identified holistic management objectives;

(e) Identify actions to be taken to reach established objectives;

(f) Be developed through public meetings;

(g) Use the public meeting records, existing survey documents, reports, and other research from federal agencies, tribal community colleges, and land grant universities; and

(h) Be completed within three(3) years of the initiation of activity to establish the plan.

#### § 166.211 Is a conservation plan required?

A conservation plan must be developed by the permittee for each permit and approved by us prior to the issuance of the permit. The conservation plan must be consistent with the tribe's agricultural resource management plan and integrated resource management plan, and must address the permittee's management objectives regarding animal husbandry and resource conservation. The conservation plan must cover the entire permit period.

#### § 166.212 Is environmental compliance required?

Actions taken by the Secretary under the regulations in this part must comply with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*),

applicable regulations of the Council on Environmental Quality (40 CFR 1500.1 *et seq.*), and applicable tribal laws and regulations.

#### **Subpart D—Tribal Policies and Laws Pertaining to Permits**

##### **§ 166.300 What tribal policies will we apply to permitting on Indian agricultural lands?**

(a) When specifically authorized by an appropriate tribal resolution establishing a general policy for permitting of Indian agricultural lands, the Secretary will:

(1) Provide a preference to Indian permittees in issuing or renewing a permit, so long as the Indian landowner receives fair annual rental;

(2) Waive or modify the requirement that a permittee post a surety or performance bond;

(3) Provide for posting of other collateral or security in lieu of a bond; and

(4) Approve permits on tribal lands at rates determined by the tribal governing body.

(b) When specifically authorized by an appropriate tribal resolution establishing a general policy for leasing of Indian agricultural lands, and subject to paragraph (c) of this section, the Secretary may:

(1) Waive or modify any general notice requirement of federal law; and

(2) Grant or approve a permit on "highly fractionated undivided heirship lands" as defined by tribal law.

(c) The Secretary may take the action specified in paragraph (b) of this section only if:

(1) The tribe defines by resolution what constitutes "highly fractionated undivided heirship lands";

(2) The tribe adopts an alternative plan for notifying Indian landowners; and

(3) The Secretary's action is necessary to prevent waste, reduce idle land acreage and ensure income.

##### **§ 166.301 May individual Indian landowners exempt their land from tribal policies for permitting on Indian agricultural lands?**

(a) The individual Indian landowner(s) of a tract of land or an undivided interest may exempt their land from our application of a tribal policy referred to under § 166.300 if:

(1) The Indian landowner(s) have at least 50% interest in such tract; and

(2) The Indian landowner(s) submit a written objection to us.

(b) The same procedure applies to withdrawing a request for exemption.

(c) Upon verification of the written objection we will notify the tribe of the Indian landowners' exemption from the specific tribal policy. If the individual Indian landowner withdraws a request for exemption, we will notify the tribe of the withdrawal.

##### **§ 166.302 Do tribal laws apply to permits?**

Tribal laws will apply to permits of Indian land under the jurisdiction of the tribe enacting such laws, unless those tribal laws are inconsistent with applicable federal law.

##### **§ 166.303 What notifications are required that tribal laws apply to permits on Indian agricultural lands?**

(a) Tribes must notify us of the content and effective dates of new tribal laws.

(b) We will then notify any persons or entities undertaking activities on Indian lands of the superseding or modifying effect of the tribal law. We will provide:

(1) Individual written notice to each permittee; or

(2) Public notice. This notice will be posted at the tribal community building, U.S. Post Office, and published in the local newspaper nearest to the Indian lands where activities are occurring.

##### **§ 166.304 Who enforces tribal laws pertaining to Indian agricultural land?**

(a) The tribe is responsible for enforcing tribal laws and ordinances pertaining to Indian agricultural lands.

(b) The Secretary will:

(1) Provide assistance in the enforcement of tribal laws; and

(2) Require appropriate federal officials to appear in tribal forums when requested by a tribe.

#### **Subpart E—Grazing Rental Rates**

##### **Rental Rate Determination and Adjustment**

##### **§ 166.400 Who establishes grazing rental rates?**

(a) For tribal lands, a tribe may establish a grazing rental rate that is less or more than the grazing rental rate established by us. We will assist a tribe to establish a grazing rental rate by providing the tribe with available information concerning the value of grazing on tribal lands.

(b) We will establish the grazing rental rate by determining the fair annual rental for:

(1) Individually owned Indian lands; and

(2) Tribes that have not established a rate under paragraph (a) of this section.

(c) Indian landowners may give us written authority to grant grazing privileges on their individually owned Indian land at a grazing rental rate that is:

(1) Above the grazing rental rate set by us; or

(2) Below the grazing rental rate set by us, subject to our approval, when the permittee is a member of the Indian landowner's immediate family as defined in this part.

##### **§ 166.401 How does the Secretary establish grazing rental rates?**

The Secretary establishes grazing rental rates by determining the fair annual rental through appraisal, advertisement, competitive bidding, negotiation, or any other appropriate method, in accordance with the Uniform Standards of Professional Appraisal Practices (USPAP).

##### **§ 166.402 Why must the Secretary determine the fair annual rental of Indian land?**

(a) The Secretary must determine the fair annual rental of Indian land to:

(1) Assist the Indian landowner in negotiating a permit with potential permittees; and

(2) Enable us to determine whether a permit is in the best interests of the Indian landowner.

##### **§ 166.403 Will the Secretary ever grant or approve a permit at less than fair annual rental?**

(a) We will grant a permit for grazing on individually owned Indian land at less than fair annual rental if, after advertising the permit, we determine that such action would be in the best interests of the individual Indian landowners.

(b) We may approve a permit for grazing on individually owned Indian land at less than fair annual rental if:

(1) The permit is for the Indian landowner's immediate family or co-owner; or

(2) We determine it is in the best interest of the Indian landowners.

(c) We may approve a permit for grazing on tribal land at less than fair annual rental if:

(1) The permittee is a tribal member or tribal entity; or

(2) We determine that it is in the best interest of the tribe.

##### **§ 166.404 Whose grazing rental rate will be applicable for a permit on tribal land?**

The following grazing rental rate schedule will apply for tribal land:

If you are * * *	And if * * *	Then you will pay * * *
(a) Grazing livestock on tribal land .....	The tribe established the grazing rental rate ... No tribal grazing rental rate has been established.	The rate set by the tribe.
(b) Grazing livestock on tribal land .....		The rate set by the BIA.
(c) The successful bidder for use of any of these specific tracts of Indian land.	.....	Your rental rate bid, but not less than the minimum bid rate advertised.

**§ 166.405 Whose grazing rental rate will be applicable for a permit on individually owned Indian land?**

The following grazing rental rate schedule will apply for individually owned Indian land:

If you are * * *	Then you will pay * * *
(a) Grazing livestock on Individually owned Indian land .....	The rate set by the BIA.
(b) The successful bidder for use of any of these specific tracts of Indian land.	Your rental rate bid, but not less than the minimum bid rate advertised.

**§ 166.406 Whose grazing rental rate will be applicable for a permit on government land?**

The following grazing rental rate schedule will apply for government land:

If you are * * *	And if * * *	Then you will pay * * *
(a) Grazing livestock on government land .....	The tribe has control over the land or the tribe has authority to set the rate.	The rate set by the tribe.
(b) Grazing livestock on government land .....	Government controls all use of the land .....	The rate set by the BIA.

**§ 166.407 If a range unit consists of tribal and individually owned Indian lands, what is the grazing rental rate?**

The grazing rental rate for tribal land will be the rate set by the tribe. The grazing rental rate for individually owned Indian land will be the grazing rental rate set by us.

**§ 166.408 Can tribal members graze livestock that they do not own on tribal land at the grazing rental rate established for tribal members?**

Yes. Tribal members may graze livestock that they do not own on tribal land at the rate set by the tribe.

**§ 166.409 Is the grazing rental rate established by the BIA adjusted periodically?**

Yes. To ensure that Indian landowners are receiving the fair annual return, we may adjust the grazing rental rate established by the BIA, based upon an appropriate valuation method, taking into account the value of improvements made under the permit, unless the permit provides otherwise, following the Uniform Standards of Professional Appraisal Practice.

(a) We will review the grazing rental rate prior to each anniversary date or when specified by the permit.

(b) We will provide you with written notice of any adjustment of the grazing rental rate 60 days prior to each anniversary date.

(c) The adjusted grazing rental rate may be less than the fair annual rental if we determine that such a rate is in the best interest of the Indian landowner.

(d) If adjusted, the grazing rental rate will become effective on the next anniversary date of the permit following the date of adjustment.

(e) These adjustments will be retroactive, if they are not made at the time specified in the permit.

(f) For permits granted by tribes, we will consult with the granting tribe to determine whether an adjustment of the grazing rental payment should be made. The permit must be modified to document the granting tribe's waiver of the adjustment.

**Rental Payments**

**§ 166.410 How is my grazing rental payment determined?**

The grazing rental payment is the total of the grazing rental rate multiplied by the number of AUMs or acres covered by the permit.

**§ 166.411 When do I pay grazing rental payments?**

All grazing rental payments are due and payable as specified in the permit. The BIA will not accept a grazing rental payment beyond the permit term, except in collection of unpaid grazing rental payments.

**§ 166.412 When is a grazing rental payment late?**

A grazing rental payment is late if it is not received within fifteen days of the payment date specified in the permit.

**§ 166.413 Will a permittee be notified when a grazing rental payment is due?**

Each permittee will receive written notice stating when grazing rental payments are due. In addition, each permit informs the permittee of the schedule of payments agreed to by the parties.

**§ 166.414 If a permittee does not receive notice that a grazing rental payment is due must the scheduled payment still be made?**

If a permittee does not receive notice that a grazing rental payment is due, the permittee remains responsible for making timely payment of all amounts due under the permit.

**§ 166.415 What will the BIA do to collect grazing rental payments that are not made in accordance with the terms of a permit?**

Failure to make grazing rental payments in accordance with the terms of a permit may be a permit violation. The Secretary will enforce permit violations under subpart H of this part.

**§ 166.416 Will I have to pay a penalty for late grazing rental payments?**

Yes. The permit will contain a provision that specifies the late grazing rental payment penalty that will be assessed and collected for late payments.

**§ 166.417 What forms of grazing rental payments are acceptable?**

Payments of money must be United States currency in one of the following forms:

- (a) Postal money order;
- (b) Bank money order;
- (c) Cashier's check;
- (d) Certified check; or
- (e) Electronic funds transfer.

**§ 166.418 To whom are grazing rental payments made?**

All grazing rental payments must be submitted as provided in the permit. The permittee must make payments payable to the party identified in the permit in the amount due, including any late payment, penalties, interest, or other amount if applicable.

**§ 166.419 May a permittee send a grazing rental payment directly to the Indian landowner?**

Yes. A permittee may send grazing rental payments directly to the Indian

landowner if the permit provides for direct payment.

**§ 166.420 Does the BIA accept partial payment for a grazing rental payment due?**

Yes, in special circumstances. Ordinarily, the total amount is due and payable by the payment date specified in the permit, and failure to make complete payment may constitute a violation of the permit. Exceptions are rarely granted and require a specific written request and the consent of the parties to the permit and our approval.

**§ 166.421 May a permittee make a grazing rental payment in advance of the due date?**

Rent may be paid no more than 30 days in advance of the due date as specified in the permit. The BIA will not accept a grazing rental payment more than 30 days prior to the beginning of the new permit term.

**§ 166.422 May an individual Indian landowner modify the terms of the permit on a fractionated tract for advance grazing rental payment?**

No. An individual Indian landowner of a fractionated tract may not modify a permit to allow a grazing rental payment in advance of the due date specified in the permit.

**Compensation to Indian Landowners**

**§ 166.423 What does the BIA do with grazing rental payments received from permittees?**

Rent will be distributed to the Indian landowners in accordance with the interest that each owns in the permitted land. The rent will be deposited to the

appropriate account maintained by the Office of Trust Funds Management in accordance with 25 CFR part 115.

**§ 166.424 How do Indian landowners receive grazing rental payments that the BIA has received from permittees?**

Funds will be paid to the Indian landowners by the Office of Trust Funds Management in accordance with 25 CFR part 115.

**§ 166.425 How will the rent be distributed if the permit covers more than one tract of land with different owners?**

The rent will be prorated based upon the number and size of the tracts in relation to the total permit interest (leasehold), and distributed to each owner according to their fractional share of each tract.

**Subpart F—Administrative and Tribal Fees**

**§ 166.500 Are there administrative fees for a permit?**

Yes. We will charge an administrative fee before approving any permit, subpermit, assignment, encumbrance, modification, or other related document.

**§ 166.501 How are administrative fees determined?**

(a) Except as provided in subsection (b), we will charge administrative fees based on the annual grazing rental rate, according to the following table:

If the annual grazing rental rate is * * *	Then the administrative fee will be * * *
(1) Less than \$500.00 .....	3% of the annual rent.
(2) Between \$500.00 and \$5,000.00 .....	2% of the annual rent.
(3) Greater than \$5,000.00 .....	1% of the annual rent.
(4) Percentage rental .....	Based on the minimum annual rental or an estimated percentage of rental.

(b) The minimum administrative fee is \$10.00 and the maximum administrative fee is \$500.00.

(c) If a tribe performs all or part of the administrative duties for this part under Pub. L. 93-638, the tribe may establish, collect, and use reasonable fees to cover its costs associated with the performance of administrative duties.

(d) The fees for subpermits, assignments, encumbrances, modifications, or other related documents will be in accordance with this table.

**§ 166.502 Are administrative fees refundable?**

No. We will not refund administrative fees.

**§ 166.503 May the Secretary waive administrative fees?**

Yes. We may waive the administrative fee for a justifiable reason.

**§ 166.504 Are there any other administrative or tribal fees, taxes, or assessments that must be paid?**

(a) The permittee may be required to pay additional fees, taxes, and/or assessments associated with the use of the land as determined by us or by the tribe.

(b) If the permitted land is within an Indian irrigation project or drainage district, the permittee must pay all charges that may accrue during the term of the permit. These may include charges for operation and maintenance of the irrigation project unless superseded by part 171 of this chapter. The permittee must pay the appropriate official in charge of the irrigation project or drainage district having jurisdiction.

### Subpart G—Bonding and Insurance Requirements

#### § 166.600 Must a permittee provide a bond for a permit?

Yes. A permittee, assignee or subpermittee must provide a bond for each permit interest acquired. Upon request by an Indian landowner, we may waive the bond requirement.

#### § 166.601 How is the amount of the bond determined?

(a) The amount of the bond for each permit is based on the:

- (1) Value of one year's grazing rental payment;
- (2) Value of any improvements to be constructed;
- (3) Cost of performance of any additional obligations such as irrigation charges; and
- (4) Cost of performance of restoration and reclamation.

(b) Tribal policy made applicable by § 166.300 of this part may establish or waive specific bond requirements for permits.

(c) We may adjust security or bond requirements at anytime to reflect changing conditions.

#### § 166.602 What form of bonds will the BIA accept?

(a) We will only accept bonds in the following forms:

- (1) Cash;
- (2) Negotiable Treasury securities that:
  - (i) Have a market value equal to the bond amount; and
  - (ii) Are accompanied by a statement granting full authority to the Secretary to sell such securities in case of a violation of the terms of the permit.
- (3) Certificates of deposit that indicate on their face that Secretarial approval is required prior to redemption by any party;
- (4) Irrevocable letters of credit (LOC) issued by federally-insured financial institutions authorized to do business in the United States. LOC's must:

(i) Contain a clause that grants the Secretary authority to demand immediate payment if the permittee defaults or fails to replace the LOC within 30 calendar days prior to its expiration date;

(ii) Be payable to the "Department of the Interior, BIA";

(iii) Be irrevocable during its term and have an initial expiration date of not less than one year following the date we receive it; and

(iv) Be automatically renewable for a period of not less than one year, unless the issuing financial institution provides the BIA with written notice at

least 90 calendar days before the letter of credit's expiration date that it will not be renewed;

(5) Surety bond; or

(6) Any other form of highly liquid, non-volatile security subsequently approved by us that is easily convertible to cash by us and for which our approval is required prior to redemption by any party.

(b) For tribal permits, a tribe may negotiate a permit term that specifies the use of any of the bond forms described in paragraph (a) of this section.

#### § 166.603 If cash is submitted as a bond, how is it administered?

If cash is submitted as a bond, we will establish an account in your name with the Office of Trust Funds Management to retain the funds.

#### § 166.604 Is interest paid on a cash performance bond?

No. Interest will not be paid on a cash performance bond.

#### § 166.605 Are cash performance bonds refunded?

If the cash performance bond has not been forfeited for cause, the principal amount deposited will be refunded to the depositor at the end of the permit period.

#### § 166.606 Is insurance required for a permit?

When we determine it to be in the best interest of the Indian landowners, we will require a permittee to provide insurance. If insurance is required, it must:

- (a) Be provided in an amount sufficient to:
  - (1) Protect any improvements on the permit premises;
  - (2) Cover losses such as personal injury or death; and
  - (3) Protect the interest of the Indian landowner.
- (b) Identify the tribe, individual Indian landowners, and United States as insured parties.

#### § 166.607 What types of insurance may be required?

We may require any or all of the following types of insurance depending upon the activity conducted under the permit: liability, casualty (such as for fire, hazard, or flood).

### Subpart H—Permit Violations

#### § 166.700 What permit violations are addressed by this subpart?

This subpart addresses violations of permit provisions other than trespass. Trespass is addressed under subpart I of this part.

#### § 166.701 How will the Secretary enforce compliance with permit provisions?

When reasonable grounds exist, the Secretary may enter the permitted premises at any reasonable time with or without prior notice to determine whether there has been a violation of the permit provisions and to protect Indian trust assets and resources.

#### § 166.702 What happens if a violation of a permit occurs?

If we determine that a violation of the permit has occurred based on facts known to us, as soon as practicable, we will provide written notice to the permittee and the sureties of the violation. This written notice will include an explanation of the violation.

#### § 166.703 What will a written notice of a violation contain?

The written notice will provide the permittee with 10 days from the receipt of the written notice to:

- (a) Cure the violation and notify us that the violation is cured.
- (b) Explain why we should not cancel the permit; or
- (c) Request in writing additional time to complete corrective actions. If additional time is granted, we may require that certain corrective actions be taken immediately.

#### § 166.704 Can a determination of violation be contested?

In the written notice of violation, we will advise the permittee of the procedure to follow to contest our determination that a violation of the permit has occurred.

#### § 166.705 What happens to a bond if a violation occurs?

We may apply the bond to remedy the violation, in which case we will require the permittee to submit a replacement bond of an appropriate amount.

#### § 166.706 What happens if a permit violation is not cured?

- (a) We will:
  - (1) Issue a written determination to cancel the permit if the violation is not cured. The decision letter will contain:
    - (i) An explanation why we are canceling the permit;
    - (ii) An order to vacate the property;
    - (iii) Notice of the right to appeal under 25 CFR part 2;
    - (iv) An order to pay delinquent rentals, damages, and other charges; and
    - (v) A requirement to post an appeal bond if applicable.
  - (2) Notify all interested parties, including the Indian landowners, by written notice as soon as practicable, of our determination to cancel a permit.
- (b) We may require the permittee to post an appeal bond in an amount

determined by us. The amount of the appeal bond will be the amount of damages, and additional rentals expected to accrue during the settlement of the appeal.

**§ 166.707 If a violation is not cured, what may an Indian landowner do?**

(a) If a violation is not cured within the required time frame, the Indian landowner may exercise rights under the permit, including a right of entry, if any, or request that we cancel the permit.

(b) If a permit authorizes termination according to tribal or other law, or provides for the resolution of certain types of disputes through alternative dispute resolution methods, the permit provisions will govern in place of these regulations.

**§ 166.708 Can the Secretary take emergency action without prior notice if the permitted premises are being damaged?**

Yes. If the permittee causes or contributes to a severe harm to the premises, the Secretary may take appropriate emergency action, in consultation with the Indian landowner, by:

- (a) Initiating action to cancel the permit;
- (b) Requiring immediate cessation of the activity resulting in the harm;
- (c) Ordering the permittee to vacate the premises immediately; and
- (d) Taking formal legal action as may be appropriate, including seeking emergency judicial action.

**§ 166.709 What rights does a permittee have if the Secretary takes emergency action under this subpart?**

A permittee may:

- (a) Agree to remedy the harm in a manner and time frame satisfactory to the Secretary and the Indian landowner;
- (b) Seek to have the permit reinstated after the harm to the property has been cured; and
- (c) Contest the Secretary's emergency actions under 25 CFR part 2.

**Subpart I—Trespass**

**§ 166.800 What is trespass?**

Under this part, trespass is any unauthorized occupancy, use of, or action on Indian agricultural and government lands assigned to the control of a tribe. The following are some examples of trespass:

- (a) Cultivating or harvesting of irrigated or non-irrigated crops or the harvesting of native hay, forage, or seed;
- (b) Erecting or damaging fencing, gates, or other structures;
- (c) Developing water resources;
- (d) Commercial filming or photography;

- (e) Sale or barter of goods or services;
- (f) Placing or storing of beehives;
- (g) Cutting, damaging, taking, harvesting, or removing agricultural products for commercial purposes, including but not limited to: berries, nuts, flowers, seeds, moss, cones, leaves, mushrooms, cactus, yucca, and greenery;

(h) Recreation, hunting, trapping, or fishing;

(i) Disturbing soil, plants, or otherwise exposing or disturbing, damaging, or removing archaeological or paleontological resources;

(j) Littering or disposing of agricultural related products, hazardous waste, household or business waste, or garbage;

(k) Applying pesticides without proper certification or misusing pesticides;

(l) Aquaculture or the harvesting of fish raised for commercial sale or consumption;

(m) Unauthorized livestock activities, including:

- (1) Driving livestock across Indian agricultural land without an approved crossing permit;
- (2) Allowing livestock to drift and graze on Indian agricultural land without an approved permit;
- (3) Grazing livestock within an area closed to grazing of that class of livestock; and
- (4) Grazing livestock in an area withdrawn from use by the BIA when damage to the Indian agricultural land is occurring due to improper handling of livestock; and

(n) Other actions designated by tribes as acts of trespass on Indian agricultural lands.

**§ 166.801 What is the BIA's trespass policy?**

We will:

- (a) Investigate accidental, and willful, or incidental trespass on Indian agricultural land.
- (b) Respond to alleged trespass in a prompt, efficient manner.

(c) Assess trespass penalties for the value of products used or removed, cost of damage to the Indian agricultural land, and enforcement costs incurred as a consequence of the trespass.

(d) Ensure that damage to Indian agricultural lands resulting from trespass is rehabilitated and stabilized at the expense of the trespasser.

**§ 166.802 Who can enforce this subpart?**

(a) The BIA enforces the provisions of this subpart. If the tribe adopts the provisions of this subpart, the tribe will have concurrent jurisdiction to enforce this subpart. Additionally, if the tribe so

requests, we will defer to tribal prosecution of trespass on Indian agricultural lands.

(b) The provisions in this subpart are exclusive of and in addition to any tribal action that may be taken under tribal law.

**Notification**

**§ 166.803 How are trespassers notified of a trespass determination?**

(a) Unless otherwise provided under tribal law, when we have reason to believe that a trespass on Indian agricultural land has occurred, we or the authorized tribal representative will provide written notice to the alleged trespasser, the possessor of trespass property, any known lien holder, and beneficial Indian landowner, as appropriate. The written notice will include the following:

- (1) The basis for the trespass determination;
- (2) A legal description of where the trespass occurred;
- (3) A verification of brands in the State Brand Book for cases of livestock trespass;
- (4) Corrective actions that must be taken;
- (5) Time frames for taking the corrective actions; and
- (6) Potential consequences and penalties for failure to take corrective action.

(b) If we determine that the alleged trespasser or possessor of trespass property is unknown or refuses delivery of the written notice, a public trespass notice will be posted at the tribal community building, U.S. Post Office, and published in the local newspaper nearest to the Indian agricultural lands where the trespass is occurring.

(c) Trespass notices under this subpart are not subject to appeal under 25 CFR part 2.

**§ 166.804 What can I do if I receive a trespass notice?**

If you receive a trespass notice, you may within the time frame specified in the notice:

- (a) Comply with the ordered corrective actions; or
- (b) Contact us in writing to explain why the trespass notice is in error. You may contact us by telephone but any explanation of trespass you wish to provide must be in writing. If we determine that we issued the trespass notice in error, we will withdraw the notice.

**§ 166.805 Who else will the BIA notify?**

We will notify anyone in possession of the Indian agricultural land on which the unauthorized livestock or other

property has been identified that such property could be Indian trust property and that no action to remove or otherwise dispose of the unauthorized livestock or other property may be taken unless authorized by us.

#### Actions

##### **§ 166.806 What actions does the BIA take against trespassers?**

If the trespasser fails to take the corrective action specified by us, we may take one or more of the following actions, as appropriate:

(a) Seize, impound, sell or dispose of unauthorized livestock or other property involved in the trespass. We may keep such property we seize for use as evidence.

(b) Assess penalties, damages, and costs, under § 166.812.

##### **§ 166.807 When will we impound unauthorized livestock or other property?**

We will impound unauthorized livestock or other property under the following conditions:

(a) Where there is imminent danger of severe injury to growing or harvestable crop or destruction of the range forage.

(b) When the known owner or his/her representative of the unauthorized livestock or other property refuses to accept delivery of a written notice of trespass and the unauthorized livestock or other property are not removed within the period prescribed in the written notice.

(c) Any time after five days of providing notice of impoundment if you failed to correct the trespass.

##### **§ 166.808 How are trespassers notified if their unauthorized livestock or other property are to be impounded?**

(a) If the trespass is not corrected in the time specified in the initial trespass notice, we will send written notice of our intent to impound unauthorized livestock or other property to the owner or his/her representative, and any known lien holder of the unauthorized livestock or other property.

(b) If we determine that the owner of the unauthorized livestock or other property or his/her representative is unknown or refuses delivery of the written notice, we will post a public notice of intent to impound at the tribal community building, U.S. Post Office, and published in the local newspaper nearest to the Indian agricultural lands where the trespass is occurring.

(c) After we have given notice as described above, we will impound unauthorized livestock or other property without any further notice.

##### **§ 166.809 What happens after my unauthorized livestock or other property are impounded?**

Following the impoundment of unauthorized livestock or other property, we will provide notice that we will sell the impounded property as follows:

(a) We will provide written notice of the sale to the owner, his/her representative, and any known lien holder. The written notice must include the procedure by which the impounded property may be redeemed prior to the sale.

(b) We will provide public notice of sale of impounded property by posting at the tribal community building, U.S. Post Office, and publishing in the local newspaper nearest to the Indian agricultural lands where the trespass is occurring. The public notice will include a description of the impounded property, and the date, time, and place of the public sale. The sale date must be at least five days after the publication and posting of notice.

##### **§ 166.810 How do I redeem my impounded livestock or other property?**

You may redeem impounded livestock or other property by submitting proof of ownership and paying all penalties, damages, and costs under § 166.812, and completing all corrective actions identified by us under § 166.803.

##### **§ 166.811 How will the sale of impounded livestock or other property be conducted?**

(a) Unless the owner or known lien holder of the impounded livestock or other property redeems the property prior to the time set by the sale, by submitting proof of ownership and settling all obligations under § 166.803 and § 166.811, the property will be sold by public sale to the highest bidder.

(b) If a satisfactory bid is not received, the livestock or property may be re-offered for sale, returned to the owner, condemned and destroyed, or otherwise disposed of.

(c) We will give the purchaser a bill of sale or other written receipt evidencing the sale.

#### Penalties, Damages, and Costs

##### **§ 166.812 What are the penalties, damages, and costs payable by trespassers on Indian agricultural land?**

Trespassers on Indian agricultural land must pay the following penalties and costs:

(a) The reasonable value of forage or crops consumed or destroyed;

(b) Expenses incurred in gathering, impounding, caring for, and disposal of livestock in cases which necessitate impoundment under § 166.807;

(c) The costs associated with any damage to Indian agricultural land;

(d) The value of the property illegally used or removed plus a penalty of double their values;

(e) The costs associated with enforcement of the regulations, including field examination and survey, damage appraisal, investigation assistance and reports, witness expenses, demand letters, court costs, and attorney fees; and

(g) All other penalties authorized by law.

##### **§ 166.813 How will the BIA determine the value of forage or crops consumed or destroyed?**

We will determine the value of forage or crops consumed or destroyed based upon the average rate received per month for comparable property or grazing privileges, or the estimated commercial value for such property or privileges.

##### **§ 166.814 How will the BIA determine the value of the property illegally used or removed?**

We will determine the value of the property illegally used or removed based upon a valuation of similar property.

##### **§ 166.815 How will the BIA determine the amount of damages to Indian agricultural land?**

We will determine the damages by considering the costs of rehabilitation and revegetation, loss of future revenue, loss of profits, loss of productivity, loss of market value, damage to other resources, and other factors.

##### **§ 166.816 How will the BIA determine the costs associated with enforcement of the trespass?**

Costs of enforcement may include detection and all actions taken by us through prosecution and collection of damages. This includes field examination and survey, damage appraisal, investigation assistance and report preparation, witness expenses, demand letters, court costs, attorney fees, and other costs.

##### **§ 166.817 What happens if I do not pay the assessed penalties, damages and costs?**

Unless otherwise provided by applicable tribal law:

(a) We will refuse to issue you a permit for use, development, or occupancy of Indian agricultural lands; and

(b) We will forward your case for appropriate legal action.

**§ 166.818 How are the proceeds from trespass distributed?**

Unless otherwise provided by tribal law:

(a) We will treat any amounts recovered under § 166.812 as proceeds from the sale of agricultural property from the Indian agricultural land upon which the trespass occurred.

(b) All amounts collected in excess of the amounts assessed under § 166.812 will be applied by us against costs associated with the enforcement of this subpart.

(c) If we seize and dispose of impounded livestock or other property of the trespasser, we will apply any cash or other proceeds to satisfy the penalties and costs of enforcement. If any money is left over, we will return it to the trespasser or, where we cannot identify the owner of the impounded property, we will deposit the net proceeds of the sale into the accounts of the landowners where the trespass occurred.

**§ 166.819 What happens if the BIA does not collect enough money to satisfy the penalty?**

If we do not collect enough money from the trespasser, we will distribute collected penalties as follows:

(a) All amounts collected up to and including the amount assessed under §§ 166.810 through 166.811 will be distributed equally:

(1) Between the beneficial Indian landowner; and

(2) Towards the cost of restoring the Indian agricultural land.

(b) We will send written notice to the trespasser and any known lien holders demanding immediate settlement and advising the trespasser that unless settlement is received within five working days from the date of receipt, we will forward the case for appropriate legal action.

**Subpart J—Appeals****§ 166.900 Can decisions by the BIA be appealed?**

Except as otherwise provided in this part, appeals from decisions of the BIA under this part may be taken pursuant to 25 CFR part 2.

**Subpart K—Records****§ 166.1000 Who owns records associated with this part?**

Any records generated in the fulfillment of this part are the property of the United States, and must be maintained in accordance with approved records retention procedures under the Federal Records Act, 44 U.S.C. 3101, *et seq.*

**Subpart L—Agriculture Education, Education Assistance, Recruitment, and Training****§ 166.1100 How are the Indian agriculture education programs operated?**

(a) The purpose of the Indian agriculture education programs is to recruit and develop promising Indian and Alaska Natives who are enrolled in secondary schools, tribal or Alaska Native community colleges, and other post-secondary schools for employment as professional resource managers and other agriculture-related professionals by approved organizations.

(b) We will operate the student educational employment program as part of our Indian agriculture education programs in accordance with the provisions of 5 CFR 213.3202(a) and (b).

(c) We will establish an education committee to coordinate and carry out the agriculture education assistance programs and to select participants for all agriculture education assistance programs. The committee will include at least one Indian professional educator in the field of natural resources or agriculture, a personnel specialist, a representative of the Intertribal Agriculture Council, and a natural resources or agriculture professional from the BIA and a representative from American Indian Higher Education Consortium. The committee's duties will include the writing of a manual for the Indian and Alaska Native Agriculture Education and Assistance Programs.

(d) We will monitor and evaluate the agriculture education assistance programs to ensure that there are adequate Indian and Alaska Native natural resources and agriculture-related professionals to manage Indian natural resources and agriculture programs by or for tribes and Alaska Native Corporations. We will identify the number of participants in the intern, student educational employment program, scholarship, and outreach programs; the number of participants who completed the requirements to become a natural resources or agriculture-related professional; and the number of participants completing advanced degree requirements.

**§ 166.1101 How will the BIA select an agriculture intern?**

(a) The purpose of the agriculture intern program is to ensure the future participation of trained, professional Indians and Alaska Natives in the management of Indian and Alaska Native agricultural land. In keeping with this purpose, we will work with tribes and Alaska Natives:

(1) To obtain the maximum degree of participation from Indians and Alaska Natives in the agriculture intern program;

(2) To encourage agriculture interns to complete an undergraduate degree program in natural resources or agriculture-related field; and

(3) To create an opportunity for the advancement of natural resources and agriculture-related technicians to professional resource management positions with the BIA, other federal agencies providing an agriculture service to their respective tribe, a tribe, or tribal agriculture enterprise.

(b) Subject to restrictions imposed by agency budgets, we will establish and maintain in the BIA at least 20 positions for the agriculture intern program. All Indians and Alaska Natives who satisfy the qualification criteria may compete for positions.

(c) Applicants for intern positions must meet the following criteria:

(1) Be eligible for Indian preference as defined in 25 CFR part 5;

(2) Possess a high school diploma or its recognized equivalent;

(3) Be able to successfully complete the intern program within a 3-year period; and

(4) Possess a letter of acceptance to an accredited post-secondary school or demonstrate that one will be sent within 90 days.

(d) We will advertise vacancies for agriculture intern positions semi-annually, no later than the first day of April and October, to accommodate entry into school.

(e) In selecting agriculture interns, we will seek to identify candidates who:

(1) Have the greatest potential for success in the program;

(2) Will take the shortest time period to complete the intern program; and

(3) Provide the letter of acceptance required by paragraph (c)(4) of this section.

(f) Agriculture interns must:

(1) Maintain full-time status in an agriculture-related curriculum at an accredited post secondary school;

(2) Maintain good academic standing;

(3) Enter into an obligated service agreement to serve as a professional resource manager or agriculture-related professional with an approved organization for two years in exchange for each year in the program; and

(4) Report for service with the approved organization during any break in attendance at school of more than three weeks.

(g) The education committee will evaluate annually the performance of the agriculture intern program participants against requirements to

ensure that they are satisfactorily progressing toward completion of program requirements.

(h) We will pay all costs for tuition, books, fees, and living expenses incurred by an agriculture intern while attending an accredited post secondary school.

**§ 166.1102 How can I become an agriculture educational employment student?**

(a) To be considered for selection, applicants for the student educational employment program must:

(1) Meet the eligibility requirements in 5 CFR part 308; and

(2) Be accepted into or enrolled in a course of study at an accredited post secondary institution which grants degrees in natural resources or agriculture-related curricula.

(b) Student educational employment steering committees established at the field level will select program participants based on eligibility requirements without regard to applicants' financial needs.

(c) A recipient of assistance under the student educational employment program will be required to enter into an obligated service agreement to serve as a natural resources or agriculture-related professional with an approved organization for one year in exchange for each year in the program.

(d) We will pay all costs of tuition, books, fees, and transportation to and from the job site to school, for an Indian or Alaska Native student who is selected for the cooperative education program.

**§ 166.1103 How can I get an agriculture scholarship?**

(a) We may grant agriculture scholarships to Indians and Alaska Natives enrolled as full time students in accredited post-secondary and graduate programs of study in natural resources and agriculture-related curricula.

(b) The education committee established in § 166.1100(a) will select program participants based on eligibility requirements stipulated in paragraphs (e) through (g) of this section without regard to applicants' financial needs or past scholastic achievements.

(c) Recipients of scholarships must reapply annually to continue to receive funding beyond the initial award period. Students who have received scholarships in past years, are in good academic standing, and have been recommended for continuation by their academic institution will be given priority over new applicants for scholarship assistance.

(d) The amount of scholarship funds an individual is awarded each year will

be contingent upon the availability of funds appropriated each fiscal year and is subject to yearly change.

(e) Preparatory scholarships may be available for a maximum of 3 academic years of general, undergraduate course work leading to a degree in natural resources or agriculture-related curricula and may be awarded to individuals who:

(1) Possess a high school diploma or its recognized equivalent; and

(2) Are enrolled and in good academic standing at an acceptable post secondary school.

(f) Undergraduate scholarships are available for a maximum of three academic years and may be awarded to individuals who:

(1) Have completed a minimum of 55 semester hours toward a bachelor's degree in a natural resources or agriculture-related curriculum; and

(2) Have been accepted into a natural resource or agriculture-related degree-granting program at an accredited college or university.

(g) Graduate scholarships are available for a maximum of five academic years for individuals selected into the graduate program of an accredited college or university that grants advanced degrees in natural resources or agriculture-related fields.

(h) A recipient of assistance under the scholarship program must enter into an obligated service agreement to serve as a natural resources or agriculture-related professional with the BIA, other federal agency providing assistance to their respective tribe, a tribe, tribal agriculture enterprise, or an ANCSA Corporation for one year for each year in the program.

(i) We will pay all scholarships approved by the education committee established in § 166.1100(d)(a) for which funding is available.

**§ 166.1104 What is agriculture education outreach?**

(a) We will establish and maintain an agriculture education outreach program for Indian and Alaska Native youth that will:

(1) Encourage students to acquire academic skills needed to succeed in post secondary mathematics and science courses;

(2) Promote agriculture career awareness;

(3) Involve students in projects and activities oriented to agriculture related professions early so students realize the need to complete required pre college courses; and

(4) Integrate Indian and Alaska Native agriculture program activities into the education of Indian and Alaska Native students.

(b) We will develop and carry out the program in consultation with appropriate community education organizations, tribes, ANCSA Corporations, Alaska Native organizations, and other federal agencies providing agriculture services to Indians.

(c) The education committee established under § 166.1100(a) will coordinate and implement the program nationally.

**§ 166.1105 Who can get assistance for postgraduate studies?**

(a) The purpose of the postgraduate studies program is to enhance the professional and technical knowledge of Indian and Alaska Native natural resource and agriculture-related professionals working for an approved organization so that the best possible service is provided to Indian and Alaska Natives.

(b) We may pay the cost of tuition, fees, books, and salary of Alaska Natives and Indians who are employed by an approved organization and who wish to pursue advanced levels of education in natural resource or agriculture-related fields.

(c) The goal of the advanced study program is to encourage participants to obtain additional academic credentials such as a degree or diploma in a natural resources or agriculture-related field. Requirements of the postgraduate study program are:

(1) The duration of course work cannot be less than one semester or more than three years; and

(2) Students in the postgraduate studies program must meet performance standards as required by the graduate school offering the study program.

(d) Program applicants must submit application packages to the education committee. At a minimum, such packages must contain a resume and an endorsement signed by the applicant's supervisor clearly stating the need for and benefits of the desired training.

(e) The education committee must use the following criteria to select participants:

(1) Need for the expertise sought at both the local and national levels;

(2) Expected benefits, both locally and nationally; and

(3) Years of experience and the service record of the employee.

(f) Program participants will enter into an obligated service agreement to serve as a natural resources or agriculture-related professional with an approved organization for two years for each year in the program. We may reduce the obligated service requirement if the employee receives

supplemental funding such as research grants, scholarships, or graduate stipends and, as a result, reduces the need for financial assistance under this part. If the obligated service agreement is breached, we will collect the amount owed us in accordance with § 166.1110.

**§ 166.1106 What can happen if we recruit you after graduation?**

(a) The purpose of the post graduation recruitment program is to recruit Indian and Alaska Native natural resource and trained agriculture technicians into the agriculture programs of approved organizations.

(b) We may assume outstanding student loans from established lending institutions of Indian and Alaska Native natural resources and agriculture technicians who have successfully completed a post-secondary natural resources or agriculture-related curriculum at an accredited institution.

(c) Indian and Alaska Natives receiving benefits under this program will enter into an obligated service agreement in accordance with § 166.1110. Obligated service required under this program will be one year for every \$5,000 of student loan debt repaid.

(d) If the obligated service agreement is breached, we will collect student loan(s) in accordance with § 166.1110.

**§ 166.1107 Who can be an intern?**

(a) Natural resources or agriculture personnel working for an approved organization may apply for an internship within agriculture-related programs of agencies of the Department of the Interior or other federal agencies providing an agriculture service to their respective reservations.

(b) Natural resources or agriculture-related personnel from other Department of the Interior agencies may apply through proper channels for "internships" within the BIA's agriculture programs. With the consent of a tribe or Alaska Native organization, the BIA can arrange for an Intergovernmental Personnel Act assignment in tribal or Alaska Native agriculture programs.

(c) Natural resources and agriculture personnel from agencies not within the Department of the Interior may apply, through proper agency channels and pursuant to an interagency agreement, for an "internship" within the BIA and, with the consent of a tribe or Alaska Native organization, we can facilitate an Intergovernmental Personnel Act assignment in a tribe, tribal agriculture enterprise, or Alaska Native Corporation.

(d) Natural resources or agriculture personnel from a tribe, tribal agriculture enterprise, or Alaska Native Corporation may apply, through proper channels and pursuant to a cooperative agreement, for an internship within another tribe, tribal forest enterprise, or ANCSA Corporation agriculture program.

(e) The employing agency of participating federal employees will provide for the continuation of salary and benefits.

(f) The host agency for participating tribal, tribal agriculture enterprise, or Alaska Native Corporation agriculture employees will provide for salaries and benefits.

(g) A bonus pay incentive, up to 25 percent (%) of the intern's base salary, may be provided to intergovernmental interns at the conclusion of the internship period. Bonus pay incentives will be at the discretion of and funded by the host organization and must be conditioned upon the host agency's documentation of the intern's superior performance, in accordance with the agency's performance standards, during the internship period.

**§ 166.1108 Who can participate in continuing education and training?**

(a) The purpose of continuing education and training is to establish a program to provide for the ongoing education and training of natural resources and agriculture personnel employed by approved organizations. This program will emphasize continuing education and training in three areas:

(1) Orientation training including tribal-federal relations and responsibilities;

(2) Technical agriculture education; and

(3) Developmental training in agriculture-based enterprises and marketing.

(b) We will maintain an orientation program to increase awareness and understanding of Indian culture and its effect on natural resources management and agriculture practices and on federal laws that effect natural resources management and agriculture operations and administration in the Indian agriculture program.

(c) We will maintain a continuing technical natural resources and agriculture education program to assist natural resources managers and agriculture-related professionals to perform natural resources and agriculture management on Indian land.

(d) We will maintain an agriculture land-based enterprise and marketing training program to assist with the

development and use of Indian and Alaska Native agriculture resources.

**§ 166.1109 What are my obligations to the BIA after I participate in an agriculture education program?**

(a) Individuals completing agriculture education programs with an obligated service requirement may be offered full time permanent employment with an approved organization to fulfill their obligated service within 90 days of the date all program education requirements have been completed. If employment is not offered within the 90 day period, the student will be relieved of obligated service requirements. Not less than 30 days before the start of employment, the employer must notify the participant of the work assignment, its location and the date work must begin. If the employer is other than the BIA, the employer must also notify us.

(b) Employment time that can be credited toward obligated service requirement will begin the day after all program education requirements have been completed, with the exception of the agriculture intern program which includes the special provisions outlined in § 166.1101(f)(4). The minimum service obligation period will be one year of full time employment.

(c) The employer has the right to designate the location of employment for fulfilling the service obligation.

(d) A participant in any of the agriculture education programs with an obligated service requirement may, within 30 days of completing all program education requirements, request a deferment of obligated service to pursue postgraduate or post-doctoral studies. In such cases, we will issue a decision within 30 days of receipt of the request for deferral. We may grant such a request; however, deferments granted in no way waive or otherwise affect obligated service requirements.

(e) A participant in any of the agriculture education programs with an obligated service requirement may, within 30 days of completing all program education requirements, request a waiver of obligated service based on personal or family hardship. We may grant a full or partial waiver or deny the request for waiver. In such cases, we will issue a decision within 30 days of receiving the request for waiver.

**§ 166.1110 What happens if I do not fulfill my obligation to the BIA?**

(a) Any individual who accepts financial support under agriculture education programs with an obligated service requirement, and who does not accept employment or unreasonably terminates employment must repay us in accordance with the following table:

If you are * * *	Then the costs that you must repay are * * *	And then the costs that you do not need to repay are * * *
(1) Agriculture intern .....	Living allowance, tuition, books, and fees received while occupying position plus interest.	Salary paid during school breaks or when recipient was employed by an approved organization
(2) Cooperative education .....	Tuition, books, and fees plus interest .....	
(3) Scholarship .....	Costs of scholarship plus interest .....	
(4) Post graduation recruitment .....	All student loans assumed by us under the program plus interest.	
(5) Postgraduate studies .....	Living allowance, tuition, books, and fees received while in the program plus interest.	Salary paid during school breaks or when recipient was employed by an approved organization.

(b) For agriculture education programs with an obligated service requirement, we will adjust the amount required for repayment by crediting toward the final amount of debt any obligated service performed before breach of contract.

Dated: June 22, 2000.

**Kevin Gover,**

*Assistant Secretary-Indian Affairs.*

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**DEPARTMENT OF THE INTERIOR**

**25 CFR Part 84**

**RIN 1076-AE03**

**Encumbrances of Tribal Land—Contract Approvals**

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** We are issuing a proposed rule stating which types of contracts or agreements encumbering tribal land are not subject to approval by the Secretary of the Interior under the Indian Tribal Economic Development and Contract Encouragement Act of 2000, Public Law 106-179. The proposed rule also provides, in accordance with the Act, that Secretarial approval is not required (and will not be granted) for any contract or agreement that the Secretary determines is not covered by the Act. Finally, for contracts and agreements that are covered by the Act, the proposed rule sets out mandatory conditions for the Secretary's approval.

**DATES:** You must submit any written comments no later than October 12, 2000.

**ADDRESSES:** Comments (2 copies) should be addressed to: U.S. Forest Service (CAET), 200 E. Broadway, Missoula, MT 59807 Attn: Trust Rule.

**FOR FURTHER INFORMATION CONTACT:** Art Gary, Bureau of Indian Affairs, Trust Policies and Procedures Project, 202-208-6422.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

In 1871, Congress enacted Section 2103 of the Revised Statutes, codified at 25 U.S.C. 81 (Section 81). It placed several restrictions, including a requirement for approval by the Secretary of the Interior, on contracts between any person and any Indian tribe or individual Indians for

the payment or delivery of any money or other thing of value, in present or in prospective, or for the granting or procuring any privilege to him, or any other person in consideration of services for said Indians relative to their lands, or to any claims growing out of, or in reference to, annuities, installments, or other moneys, claims, demands, or thing, under laws or treaties with the United States, or official acts of any officers thereof, or in any way connected with or due from the United States.

Section 81 reflected Congressional concern that Indian tribes and individual Indians were incapable of protecting themselves from fraud in their financial affairs. To that end, it also required that the Secretary approve any contracts for legal services between an Indian tribe and an attorney, and provided that any person could bring an action in the name of the United States to enforce the Section's requirements (the "qui tam" provision).

Over the years, administration of this statute became difficult. Although it was interpreted early on not to apply to leases of Indian land (see *Lease of Indian Lands for Grazing Purposes*, 18 Op. Atty. Gen. 235 (1885)), parties opposed to such leases still asked courts to invalidate them based on alleged non-compliance with Section 81. See, e.g., *United States ex rel. Harlon v. Bacon*, 21 F.3d 209 (8th Cir. 1994) (a suit under the qui tam provision). As time went on, there was confusion over exactly what contracts Section 81 did or did not cover. The Bureau of Indian Affairs (BIA) began to issue "accommodation approvals" for contracts that did not require the Secretary's approval, but where the relevant Indian tribe requested that they be approved anyway

to avoid casting any doubt upon the tribe's authority to enter into the contract. To accommodate the tribe's request, the BIA would "approve" the contract, even though such "approval" was not required under Section 81.

In addition to administrative problems, Section 81 became outdated. It was a relic of a paternalistic policy towards Indian tribes prevalent at the end of the nineteenth century. As noted by the Senate Committee on Indian Affairs in its report on Pub. L. 106-179 (the Senate Report), "Indian tribes, their corporate partners, courts, and the BIA have struggled for decades with how to apply Section 81 in an era that emphasizes tribal self-determination, autonomy, and reservation economic development." Congress attempted to address some of these concerns through enactment of later statutes such as the Indian Reorganization Act (IRA) of 1934, 48 Stat. 984; the Indian Self-Determination and Education Assistance Act of 1975, Pub. L. 93-638; and the Indian Mineral Development Act of 1982, Pub. L. 97-382. Since, however, Congress did not change the provisions of Section 81 (except for a minor amendment in 1958), the uncertainty in its application continued.

To address this uncertainty, Congress enacted the Indian Tribal Economic Development and Contract Encouragement Act of 2000 (the Act), Pub. L. 106-179, in March 2000. Section 2 of the Act replaces the text of Section 81 with six subsections. Subsection (a) supplies definitions, which are incorporated into the proposed regulations. Subsection (b) provides that agreements or contracts with Indian tribes that encumber Indian lands for a period of seven or more years are not valid unless they bear the approval of the Secretary of the Interior or a designee of the Secretary. By making this change, Section 81 no longer applies to a broad range of commercial transactions. Instead, as noted in the Senate Report, Section 81 will apply only to those transactions where the contract between the tribe and a third